

No. _____

In the Supreme Court of the United States

WILLIAM C. TOTH JR.; WILLIAM J. HALL; HOWARD GARTLAND;
JAMES BOGNET; AARON BASHIR; ALAN M. HALL,

Applicants,

v.

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

Respondents

**APPENDIX TO EMERGENCY APPLICATION TO JUSTICE ALITO
FOR WRIT OF INJUNCTION**

WALTER S. ZIMOLONG III
Zimolong LLC
Post Office Box 552
Villanova, Pennsylvania 19085
(215) 665-0842
wally@zimolonglaw.com

GENE P. HAMILTON
Vice-President and General Counsel
America First Legal Foundation
300 Independence Avenue SE
Washington, DC 20003
(202) 964-3721
gene.hamilton@aflegal.org

JONATHAN F. MITCHELL
Counsel of Record
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

Counsel for Applicants

TABLE OF CONTENTS

Original Complaint (ECF No. 1)	App. 1
Request to Convene Three-Judge Court (ECF No. 3)	App. 15
First Amended Complaint (ECF No. 7).....	App. 18
Emergency Motion for TRO/PI (ECF No. 8).....	App. 33
Carter State-Court Petition (ECF No. 8-1)	App. 49
Carter First Application for Extraordinary Relief (ECF No. 8-2)	App. 72
SCOPA Order Denying Application for Relief (ECF No. 8-3)	App. 178
Judge McCullough’s Scheduling Order (ECF No. 8-4)	App. 183
Carter Second Application for Extraordinary Relief (ECF No. 8-5) ..	App. 187
SCOPA Order Granting Application for Relief (ECF No. 8-6)	App. 263
Judge McCullough’s Findings and Recommendation (ECF No. 8-7) App.	265
SCOPA Order Suspending Primary Calendar (ECF No. 8-8).....	App. 493
Commonwealth’s Brief in SCOPA (ECF No. 8-9)	App. 495
Declaration of James Bognet (ECF No. 8-10)	App. 519
Declaration of Aaron Bashir (ECF No. 8-11)	App. 522
Declaration of Alan M. Hall (ECF No. 8-12)	App. 525
Proposed Order (ECF No. 8-13)	App. 527
District Court Scheduling Order (ECF No. 9).....	App. 530
Renewed Emergency Motion for TRO/PI (ECF No. 30)	App. 532
Brief in Support of Renewed Emergency Motion (ECF No. 31)	App. 540
SCOPA Order Adopting Carter Map (ECF No. 31-1).....	App. 548
Proposed Order (ECF No. 31-2)	App. 553
Supplemental Declaration of Aaron Bashir (ECF No. 39)	App. 556
Supplemental Declaration of Alan M. Hall (ECF No. 39-1).....	App. 559
Order Denying TRO and Scheduling Order (ECF No. 43).....	App. 561
Motion for Leave to File Second Amended Complaint (ECF No. 48) App.	563
Second Amended Complaint (Proposed) (ECF No. 49).....	App. 568
Carter Brief with Rodden Report (ECF No. 49-5)	App. 596
House Republican Brief (ECF No. 49-6)	App. 651
Declaration of Howard Gartland (ECF No. 49-14)	App. 808
Declaration of Seth Grove (ECF No. 49-15)	App. 809
Notice of Appeal (ECF No. 50)	App. 816

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

William C. Toth Jr.; William J. Hall; James Bognet; Alan M. Hall,

Plaintiffs,

v.

Lehigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth; **Jessica Mathis**, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries; **Tom Wolf**, in his official capacity as Governor of Pennsylvania,

Defendants

Case No. _____

COMPLAINT

The state of Pennsylvania lost a congressional seat in the most recent decennial census. The Pennsylvania legislature must therefore draw a new congressional map for the 2022 elections. Under the U.S. Constitution, the “legislature” in each state is charged with prescribing the “times, places, and manner” of electing Senators and Representatives, although Congress may enact laws to “make or alter such regulations.” *See* U.S. Const. art. I, § 4, cl. 1 (“The

Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”). That means the state legislature must either enact a new congressional map or delegate its map-creation authority to another institution. *See, e.g., Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015).

The Pennsylvania legislature, however, has not yet enacted a congressional map for the 2022 elections. Although the General Assembly passed a new congressional map earlier this year, it was vetoed by Governor Wolf. *See Smiley v. Holm*, 285 U.S. 355 (1932) (redistricting legislation that is vetoed by the governor is not “prescribed . . . by the Legislature” within the meaning of the Elections Clause). In the meantime, a group of litigants has repaired to state court in the hopes of inducing the Supreme Court of Pennsylvania to impose a congressional map for the 2022 elections—and the state supreme court has scheduled oral arguments on this matter for February 18, 2022. But any map imposed by the state supreme court would be flatly unconstitutional. The Elections Clause says that “the Legislature”—not the judiciary—must “prescribe” the manner of electing representatives, and the General Assembly has not authorized the state judiciary to draw congressional maps or participate in the redistricting process in any way. The state judiciary must therefore wait for the General Assembly to act. And any attempt by the state judiciary to usurp the legislature’s constitutionally assigned role must be disregarded by

state officials, who are compelled to honor the Elections Clause over any contrary edicts that might emanate from a state court.

If the General Assembly fails to enact a new congressional map in time for the 2022 elections, then the remedy is set forth in 2 U.S.C. § 2a(c): The state’s congressional delegation shall be elected at-large:

Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: . . . (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

2 U.S.C. § 2a(c). The Elections Clause requires state officials to implement this congressional instruction if the General Assembly fails to enact a new congressional map in time for the 2022 elections. Congress, in enacting 2 U.S.C. § 2a(c)(5), has “ma[de] . . . Regulations” that govern the election of representatives pursuant to its authority under the Elections Clause, and state election officials are constitutionally obligated to follow this congressional command over any contrary instructions that might appear in a state-court ruling.

The notion that the Supreme Court of Pennsylvania can replace the fallback regime that Congress has established in 2 U.S.C. § 2a(c)(5) with a congressional map of its own creation violates the Constitution in at least two respects. First, it usurps the authority that the Elections Clause assigns to the state legislature, because the Elections Clause gives “the Legislature” and not the judiciary the power to “prescribe” the manner of electing representatives.

Second, it usurps the authority that the Elections Clause confers upon Congress, because Congress has enacted a statute requiring Pennsylvania's representatives to be elected at large if the General Assembly fails to enact a map in time for the 2022 elections. The Court should therefore enter declaratory and injunctive relief that compels the defendants to hold at-large elections for the 2022 Pennsylvania congressional delegation, notwithstanding any ruling that might issue from the Supreme Court of Pennsylvania, unless and until the General Assembly enacts a new congressional map.

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

2. Venue is proper in this district and division because a substantial portion of the events or omissions giving rise to the present claim occurred in this district and division. *See* 28 U.S.C. § 1391(b)(2).

3. The plaintiffs request a three-judge panel under 28 U.S.C. § 2284(a) because this action is challenging to the constitutionality of the apportionment of congressional districts.

PARTIES

4. Plaintiff William C. Toth Jr. is a resident of Columbia County and a registered voter in Pennsylvania.

5. Plaintiff William J. Hall is a resident of Lycoming County and a registered voter in Pennsylvania.

6. Plaintiff Jim Bognet is a resident of Luzerne County and a Republican candidate for Congress. He is also a registered voter in Pennsylvania.

7. Plaintiff Alan M. Hall is resident of Susquehanna County and a member of the Susquehanna Board of Elections. He is also a registered voter in Pennsylvania.

8. Defendant Lehigh M. Chapman is Acting Secretary of the Commonwealth of Pennsylvania. She may be served at 302 North Office Building, 401 North Street Harrisburg, Pennsylvania 17120. Acting Secretary Chapman is sued in her official capacity.

9. Defendant Jessica Mathis is Director for the Pennsylvania Bureau of Election Services and Notaries. She may be served at 210 North Office Building, 401 North Street Harrisburg, Pennsylvania 17120. Director Mathis is sued in her official capacity.

10. Defendant Tom Wolf is the governor of Pennsylvania. He may be served at the Office of the Governor, 508 Main Capitol Building, Harrisburg, Pennsylvania 17120. Governor Wolf is sued in his official capacity.

FACTS

11. Before the 2020 census, the state of Pennsylvania had 18 seats in the U.S. House of Representatives.

12. The results of the 2020 census left Pennsylvania with 17 seats in the U.S. House of Representatives, one less than before. *See* U.S. Dept. of Commerce, Table 1. Apportionment Population and Number of Representatives by State: 2020 Census.

13. Under the Elections Clause of the U.S. Constitution, “the Legislature” of Pennsylvania must prescribe the “manner” by which its representatives are elected, while Congress “may at any time by Law make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1; *see also id.* (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”). The powers conferred by the Elections Clause include the prerogative to draw a new congressional map in response to the decennial census.

14. On August 20, 2021, the census-block results of the 2020 Census were delivered to Governor Wolf and the leaders of the General Assembly, which allowed the legislature to begin the process of drawing a new congressional map.

15. On December 15, 2021, the House State Government Committee approved a new congressional map (HB 2541), in a 14-11 vote. The General Assembly eventually passed HB 2541, but it was vetoed by Governor Wolf on January 26, 2022.

16. On December 17, 2021, eighteen voters filed a lawsuit in the Commonwealth Court of Pennsylvania, asking the state judiciary to impose a map for the 2022 congressional elections. *See* Exhibit 1. Later that day, a separate group of twelve voters filed a similar lawsuit in the Commonwealth Court.

17. The Commonwealth Court of Pennsylvania is the court of original jurisdiction for lawsuits involving the state and its officials. It has a 6-3 Republican majority.

18. The Commonwealth Court consolidated the two redistricting cases on December, 20, 2021, and the cases were assigned to Judge Patricia McCullough, a Republican.

19. On December 21, 2021, the petitioners in those cases filed an application for extraordinary relief in the Supreme Court of Pennsylvania, asking the state supreme court to exercise extraordinary jurisdiction over the case. *See* Exhibit 2.

20. The Supreme Court of Pennsylvania has a 5-2 Democratic majority.

21. On January 10, 2022, the state supreme court declined to invoke its extraordinary jurisdiction and denied the application for extraordinary relief without prejudice. *See* Exhibit 3.

22. On January 14, 2022, Judge McCullough ordered all parties and intervenors to submit proposed maps and expert reports by January 24, 2022. Judge McCullough also scheduled an evidentiary hearing for January 27 and 28, 2022, and announced that if the General Assembly “has not produced a new congressional map by January 30, 2022, the Court shall proceed to issue an opinion based on the hearing and evidence presented by the Parties.” *See* Exhibit 4.

23. On January 26, 2022, Governor Wolf vetoed HB 2541, a congressional map that had been approved by the General Assembly.

24. On January 27 and 28, 2022, Judge McCullough presided over the evidentiary hearings that had been scheduled in her order of January 14, 2022.

25. On January 29, 2022, the petitioners in the state redistricting lawsuit filed a new “emergency application” with the Supreme Court of Pennsylvania, asking the state supreme court to immediately exercise “extraordinary jurisdiction” and take over the redistricting litigation from Judge McCullough. *See* Exhibit 5.

26. On February 1, 2022, Judge McCullough announced that her ruling in the redistricting cases will issue no later than February 4, 2022.

27. On February 2, 2022, before Judge McCullough had issued her ruling, the Pennsylvania Supreme Court granted the application to exercise extraordinary jurisdiction in a 5-2 party-line vote.

28. The state supreme court’s order designated Judge McCullough to serve as a “Special Master,” and instructed her to file with the Supreme Court of Pennsylvania, on or before February 7, 2022, “a report containing proposed findings of fact and conclusions of law supporting her recommendation of a redistricting plan from those submitted to the Special Master, along with a proposed revision to the 2022 election schedule/calendar.” *See* Exhibit 6.

29. Justice Mundy and Justice Brobson dissented from the state supreme court’s order granting extraordinary relief and exercising extraordinary jurisdiction.

30. On February 7, 2022, Judge McCullough issued her findings and recommended that the map approved by the General Assembly (HB 2541) be used as the congressional map. *See* Exhibit 7.

31. The state supreme court has allowed any party or intervenor to file exceptions to Judge McCullough’s findings by February 14, 2022, and the state supreme court has scheduled oral argument for February 18, 2022.

32. On February 9, 2022, the state supreme court issued an order sua sponte that purports to “suspend” the General Primary Election calendar codified in 25 Pa. Stat. §§ 2868 and 2873. *See* Exhibit 8. No litigant had asked the state supreme court to suspend the primary-election calendar or issue an order purporting to do so.

PENNSYLVANIA’S ELECTION LAWS

33. A candidate who wishes to appear on the primary ballot in Pennsylvania must file a nomination petition signed by members of his party who are registered voters. *See* 25 Pa. Stat. §§ 2867.

34. Candidates for the U.S. House of Representatives in Pennsylvania must obtain 1,000 signatures from registered voters in the Commonwealth at large. *See* 25 Pa. Stat. §§ 2872.1(12).

35. The statutes governing Pennsylvania elections provide that the first day that candidates may begin circulating nominating petitions is February 15, 2022. The final day to obtain signatures is March 8, 2022.

36. The statutes governing Pennsylvania elections require the state’s primary elections to be held on May 17, 2022.

FACTS RELATED TO STANDING

37. Each of the four plaintiffs is a registered voter in Pennsylvania, and each of them is suffering injury in fact from the defendants' refusal to hold at-large elections for the state's congressional delegation. Under 2 U.S.C. § 2a(c)(5), the plaintiffs are entitled to cast ballots for all 17 of the state's representatives in the U.S. House if the General Assembly fails to enact a new congressional map in time for the 2022 elections. The defendants are depriving each of the plaintiffs of their entitlement to vote in all 17 congressional races by refusing to hold at-large elections as required by 2 U.S.C. § 2a(c)(5). This injury is traceable to the allegedly unlawful conduct of the named defendants. And it will be redressed by an injunction requiring the defendants to conduct at-large elections for Pennsylvania's congressional delegation unless and until the General Assembly enacts a new congressional map.

38. Plaintiff Bognet is suffering additional injury in fact because the defendants' refusal to honor 2 U.S.C. § 2a(c)(5) leaves him uncertain of how he should campaign for a seat in the U.S. House of Representatives. The primary election is only three months away, and the defendants are leaving Mr. Bognet (and every other candidate for the U.S. House) in the dark about how who their constituents and voters will be. A candidate for office needs to know how and where he will campaign, and the defendants' behavior is perpetuating and prolonging this uncertainty. This injury is traceable to the allegedly unlawful conduct of the named defendants. And it will be redressed by an injunction requir-

ing the defendants to conduct at-large elections for Pennsylvania's congressional delegation, as required by 2 U.S.C. § 2a(c)(5), unless and until the General Assembly enacts a new congressional map.

39. Plaintiff Alan M. Hall is suffering additional injury in fact in his capacity as a member of the Susquehanna County Board of Elections. As a member of the Board of Elections, Mr. Hall must oversee the lawful administration of all aspects of elections, including voter registration, the voting process, and tabulation of votes. He must also certify the results of all primary and general elections in the county to the Secretary of State. *See* 25 Pa. Stat. Ann. § 2642(k); 25 Pa. Stat. Ann. § 3154(a). He must issue rules and regulations that the Board deems necessary for the administration of elections. *See* 25 Pa. Stat. § 2642(f). And he must ensure that elections are “honestly, efficiently, and uniformly conducted.” 25 Pa. Stat. § 2642(g). Mr. Hall cannot prepare for the upcoming primary when the defendants refuse to implement the requirements of 2 U.S.C. § 2a(c)(5) and leave election officials uncertain about whether and when a congressional map will be imposed, or what the fallback regime will be if the General Assembly is unable to enact a map in time for the primary election. This injury is traceable to the allegedly unlawful conduct of the named defendants. And it will be redressed by an injunction requiring the defendants to conduct at-large elections for Pennsylvania's congressional delegation unless and until the General Assembly enacts a new congressional map.

CLAIM FOR RELIEF

40. The Elections Clause provides:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const. art. 1, § 4, cl. 1 (emphasis added).

41. The Elections Clause forbids the defendants to implement a congressional map that was drawn by the Supreme Court of Pennsylvania, because the state supreme court is not part of “the Legislature,” and the General Assembly has not delegated any of its map-drawing powers to the state judiciary or authorized the state courts to involve themselves in the redistricting process in any way.

42. The Elections Clause also forbids the defendants to defy the requirements of 2 U.S.C. § 2a(c)(5), which requires Pennsylvania to hold at-large elections if the General Assembly fails to enact a new congressional map in time for the 2022 primary. *See* U.S. Const. art. 1, § 4, cl. 1 (allowing Congress to “make or alter” regulations for electing representatives). The Supreme Court of Pennsylvania is constitutionally forbidden to replace the fallback regime that Congress has established in 2 U.S.C. § 2a(c)(5) with a court-drawn map—and the state’s election officials are constitutionally obligated to implement 2 U.S.C. § 2a(c)(5) over any contrary command that might emanate from the state judiciary.

43. The Court should enter declaratory and injunctive relief that requires the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map.

44. The plaintiffs bring these claims under 42 U.S.C. § 1983, the Declaratory Judgment Act, and any implied rights of action that might exist under the Constitution of the United States or any election-related statute enacted by Congress.

DEMAND FOR RELIEF

45. The plaintiffs respectfully request that the court:

- a. declare that the Elections Clause and 2 U.S.C. § 2a(c)(5) require the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map;
- b. enter a preliminary and permanent injunction that compels the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map;
- c. award the plaintiffs costs and attorneys' fees under 42 U.S.C. § 1988;
- d. grant all other relief that the Court may deem just, proper, or equitable.

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 10, 2022

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

William C. Toth Jr.; William J. Hall; James Bognet; Alan M. Hall,

Plaintiffs,

v.

Lehigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth; **Jessica Mathis**, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries; **Tom Wolf**, in his official capacity as Governor of Pennsylvania,

Defendants

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

REQUEST TO CONVENE A THREE-JUDGE DISTRICT COURT UNDER 28 U.S.C. § 2284(a)

The plaintiffs respectfully request that a district court of three judges be convened, as the plaintiffs are challenging the constitutionality of the apportionment of Pennsylvania's congressional districts. *See* 28 U.S.C. § 2284(a). The plaintiffs further request that this Court immediately notify the chief judge of the U.S. Court of Appeals for the Third Circuit, so that he may designate the two other judges as required by 28 U.S.C. § 2284(b)(1).

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 11, 2022

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that this document will be hand served on each of the defendants, along with the complaint and summons, later today.

Dated: February 11, 2022

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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

William C. Toth Jr.; William J. Hall; James Bognet; Aaron Bashir; Alan M. Hall,

Plaintiffs,

v.

Lehigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth; **Jessica Mathis**, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries; **Tom Wolf**, in his official capacity as Governor of Pennsylvania,

Defendants

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

FIRST AMENDED COMPLAINT

The state of Pennsylvania lost a congressional seat in the most recent decennial census. The Pennsylvania legislature must therefore draw a new congressional map for the 2022 elections. Under the U.S. Constitution, the “legislature” in each state is charged with prescribing the “times, places, and manner” of electing Senators and Representatives, although Congress may enact laws to “make or alter such regulations.” *See* U.S. Const. art. I, § 4, cl. 1 (“The

Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”). That means the state legislature must either enact a new congressional map or delegate its map-creation authority to another institution. *See, e.g., Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015).

The Pennsylvania legislature, however, has not yet enacted a congressional map for the 2022 elections. Although the General Assembly passed a new congressional map earlier this year, it was vetoed by Governor Wolf. *See Smiley v. Holm*, 285 U.S. 355 (1932) (redistricting legislation that is vetoed by the governor is not “prescribed . . . by the Legislature” within the meaning of the Elections Clause). In the meantime, a group of litigants has repaired to state court in the hopes of inducing the Supreme Court of Pennsylvania to impose a congressional map for the 2022 elections—and the state supreme court has scheduled oral arguments on this matter for February 18, 2022. But any map imposed by the state supreme court would be flatly unconstitutional. The Elections Clause says that “the Legislature”—not the judiciary—must “prescribe” the manner of electing representatives, and the General Assembly has not authorized the state judiciary to draw congressional maps or participate in the redistricting process in any way. The state judiciary must therefore wait for the General Assembly to act. And any attempt by the state judiciary to usurp the legislature’s constitutionally assigned role must be disregarded by

state officials, who are compelled to honor the Elections Clause over any contrary edicts that might emanate from a state court.

If the General Assembly fails to enact a new congressional map in time for the 2022 elections, then the remedy is set forth in 2 U.S.C. § 2a(c): The state’s congressional delegation shall be elected at-large:

Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: . . . (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

2 U.S.C. § 2a(c). The Elections Clause requires state officials to implement this congressional instruction if the General Assembly fails to enact a new congressional map in time for the 2022 elections. Congress, in enacting 2 U.S.C. § 2a(c)(5), has “ma[de] . . . Regulations” that govern the election of representatives pursuant to its authority under the Elections Clause, and state election officials are constitutionally obligated to follow this congressional command over any contrary instructions that might appear in a state-court ruling.

The notion that the Supreme Court of Pennsylvania can replace the fallback regime that Congress has established in 2 U.S.C. § 2a(c)(5) with a congressional map of its own creation violates the Constitution in at least two respects. First, it usurps the authority that the Elections Clause assigns to the state legislature, because the Elections Clause gives “the Legislature” and not the judiciary the power to “prescribe” the manner of electing representatives.

Second, it usurps the authority that the Elections Clause confers upon Congress, because Congress has enacted a statute requiring Pennsylvania's representatives to be elected at large if the General Assembly fails to enact a map in time for the 2022 elections. The Court should therefore enter declaratory and injunctive relief that compels the defendants to hold at-large elections for the 2022 Pennsylvania congressional delegation, notwithstanding any ruling that might issue from the Supreme Court of Pennsylvania, unless and until the General Assembly enacts a new congressional map.

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

2. Venue is proper in this district and division because a substantial portion of the events or omissions giving rise to the present claim occurred in this district and division. *See* 28 U.S.C. § 1391(b)(2).

3. The plaintiffs request a three-judge panel under 28 U.S.C. § 2284(a) because this action is challenging to the constitutionality of the apportionment of congressional districts.

PARTIES

4. Plaintiff William C. Toth Jr. is a resident of Columbia County and a registered voter in Pennsylvania.

5. Plaintiff William J. Hall is a resident of Lycoming County and a registered voter in Pennsylvania.

6. Plaintiff Jim Bognet is a resident of Luzerne County and a Republican candidate for Congress. He is also a registered voter in Pennsylvania.

7. Plaintiff Aaron Bashir is a resident of Philadelphia County and a Republican candidate for Congress. He is also a registered voter in Pennsylvania.

8. Plaintiff Alan M. Hall is resident of Susquehanna County and a member of the Susquehanna Board of Elections. He is also a registered voter in Pennsylvania.

9. Defendant Lehigh M. Chapman is Acting Secretary of the Commonwealth of Pennsylvania. She may be served at 302 North Office Building, 401 North Street Harrisburg, Pennsylvania 17120. Acting Secretary Chapman is sued in her official capacity.

10. Defendant Jessica Mathis is Director for the Pennsylvania Bureau of Election Services and Notaries. She may be served at 210 North Office Building, 401 North Street Harrisburg, Pennsylvania 17120. Director Mathis is sued in her official capacity.

11. Defendant Tom Wolf is the governor of Pennsylvania. He may be served at the Office of the Governor, 508 Main Capitol Building, Harrisburg, Pennsylvania 17120. Governor Wolf is sued in his official capacity.

FACTS

12. Before the 2020 census, the state of Pennsylvania had 18 seats in the U.S. House of Representatives.

13. The results of the 2020 census left Pennsylvania with 17 seats in the U.S. House of Representatives, one less than before. *See* U.S. Dept. of Commerce, Table 1. Apportionment Population and Number of Representatives by State: 2020 Census.

14. Under the Elections Clause of the U.S. Constitution, “the Legislature” of Pennsylvania must prescribe the “manner” by which its representatives are elected, while Congress “may at any time by Law make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1; *see also id.* (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”). The powers conferred by the Elections Clause include the prerogative to draw a new congressional map in response to the decennial census.

15. On August 20, 2021, the census-block results of the 2020 Census were delivered to Governor Wolf and the leaders of the General Assembly, which allowed the legislature to begin the process of drawing a new congressional map.

16. On December 15, 2021, the House State Government Committee approved a new congressional map (HB 2541), in a 14-11 vote. The General Assembly eventually passed HB 2541, but it was vetoed by Governor Wolf on January 26, 2022.

17. On December 17, 2021, eighteen voters filed a lawsuit in the Commonwealth Court of Pennsylvania, asking the state judiciary to impose a map for

the 2022 congressional elections. *See* Exhibit 1. Later that day, a separate group of twelve voters filed a similar lawsuit in the Commonwealth Court.

18. The Commonwealth Court of Pennsylvania is the court of original jurisdiction for lawsuits involving the state and its officials. It has a 6-3 Republican majority.

19. The Commonwealth Court consolidated the two redistricting cases on December, 20, 2021, and the cases were assigned to Judge Patricia McCullough, a Republican.

20. On December 21, 2021, the petitioners in those cases filed an application for extraordinary relief in the Supreme Court of Pennsylvania, asking the state supreme court to exercise extraordinary jurisdiction over the case. *See* Exhibit 2.

21. The Supreme Court of Pennsylvania has a 5-2 Democratic majority.

22. On January 10, 2022, the state supreme court declined to invoke its extraordinary jurisdiction and denied the application for extraordinary relief without prejudice. *See* Exhibit 3.

23. On January 14, 2022, Judge McCullough ordered all parties and intervenors to submit proposed maps and expert reports by January 24, 2022. Judge McCullough also scheduled an evidentiary hearing for January 27 and 28, 2022, and announced that if the General Assembly “has not produced a new congressional map by January 30, 2022, the Court shall proceed to issue an opinion based on the hearing and evidence presented by the Parties.” *See* Exhibit 4.

24. On January 26, 2022, Governor Wolf vetoed HB 2541, a congressional map that had been approved by the General Assembly.

25. On January 27 and 28, 2022, Judge McCullough presided over the evidentiary hearings that had been scheduled in her order of January 14, 2022.

26. On January 29, 2022, the petitioners in the state redistricting lawsuit filed a new “emergency application” with the Supreme Court of Pennsylvania, asking the state supreme court to immediately exercise “extraordinary jurisdiction” and take over the redistricting litigation from Judge McCullough. *See* Exhibit 5.

27. On February 1, 2022, Judge McCullough announced that her ruling in the redistricting cases will issue no later than February 4, 2022.

28. On February 2, 2022, before Judge McCullough had issued her ruling, the Pennsylvania Supreme Court granted the application to exercise extraordinary jurisdiction in a 5-2 party-line vote.

29. The state supreme court’s order designated Judge McCullough to serve as a “Special Master,” and instructed her to file with the Supreme Court of Pennsylvania, on or before February 7, 2022, “a report containing proposed findings of fact and conclusions of law supporting her recommendation of a redistricting plan from those submitted to the Special Master, along with a proposed revision to the 2022 election schedule/calendar.” *See* Exhibit 6.

30. Justice Mundy and Justice Brobson dissented from the state supreme court’s order granting extraordinary relief and exercising extraordinary jurisdiction.

31. On February 7, 2022, Judge McCullough issued her findings and recommended that the map approved by the General Assembly (HB 2541) be used as the congressional map. *See* Exhibit 7.

32. The state supreme court has allowed any party or intervenor to file exceptions to Judge McCullough’s findings by February 14, 2022, and the state supreme court has scheduled oral argument for February 18, 2022.

33. On February 9, 2022, the state supreme court issued an order *sua sponte* that purports to “suspend” the General Primary Election calendar codified in 25 Pa. Stat. §§ 2868 and 2873. *See* Exhibit 8. No litigant had asked the state supreme court to suspend the primary-election calendar or issue an order purporting to do so.

PENNSYLVANIA’S ELECTION LAWS

34. A candidate who wishes to appear on the primary ballot in Pennsylvania must file a nomination petition signed by members of his party who are registered voters. *See* 25 Pa. Stat. §§ 2867.

35. Candidates for the U.S. House of Representatives in Pennsylvania must obtain 1,000 signatures from registered voters in the Commonwealth at large. *See* 25 Pa. Stat. §§ 2872.1(12).

36. The statutes governing Pennsylvania elections provide that the first day that candidates may begin circulating nominating petitions is February 15, 2022. The final day to obtain signatures is March 8, 2022.

37. The statutes governing Pennsylvania elections require the state’s primary elections to be held on May 17, 2022.

FACTS RELATED TO STANDING

38. Each of the four plaintiffs is a registered voter in Pennsylvania, and each of them is suffering injury in fact from the defendants' refusal to hold at-large elections for the state's congressional delegation. Under 2 U.S.C. § 2a(c)(5), the plaintiffs are entitled to cast ballots for all 17 of the state's representatives in the U.S. House if the General Assembly fails to enact a new congressional map in time for the 2022 elections. The defendants are depriving each of the plaintiffs of their entitlement to vote in all 17 congressional races by refusing to hold at-large elections as required by 2 U.S.C. § 2a(c)(5). This injury is traceable to the allegedly unlawful conduct of the named defendants. And it will be redressed by an injunction requiring the defendants to conduct at-large elections for Pennsylvania's congressional delegation unless and until the General Assembly enacts a new congressional map.

39. Plaintiff Bognet is suffering additional injury in fact because the defendants' refusal to honor 2 U.S.C. § 2a(c)(5) leaves him uncertain of how he should campaign for a seat in the U.S. House of Representatives. The primary election is only three months away, and the defendants are leaving Mr. Bognet (and every other candidate for the U.S. House) in the dark about how who their constituents and voters will be. A candidate for office needs to know how and where he will campaign, and the defendants' behavior is perpetuating and prolonging this uncertainty. This injury is traceable to the allegedly unlawful conduct of the named defendants. And it will be redressed by an injunction requir-

ing the defendants to conduct at-large elections for Pennsylvania's congressional delegation, as required by 2 U.S.C. § 2a(c)(5), unless and until the General Assembly enacts a new congressional map.

40. Plaintiff Alan M. Hall is suffering additional injury in fact in his capacity as a member of the Susquehanna County Board of Elections. As a member of the Board of Elections, Mr. Hall must oversee the lawful administration of all aspects of elections, including voter registration, the voting process, and tabulation of votes. He must also certify the results of all primary and general elections in the county to the Secretary of State. *See* 25 Pa. Stat. Ann. § 2642(k); 25 Pa. Stat. Ann. § 3154(a). He must issue rules and regulations that the Board deems necessary for the administration of elections. *See* 25 Pa. Stat. § 2642(f). And he must ensure that elections are “honestly, efficiently, and uniformly conducted.” 25 Pa. Stat. § 2642(g). Mr. Hall cannot prepare for the upcoming primary when the defendants refuse to implement the requirements of 2 U.S.C. § 2a(c)(5) and leave election officials uncertain about whether and when a congressional map will be imposed, or what the fallback regime will be if the General Assembly is unable to enact a map in time for the primary election. This injury is traceable to the allegedly unlawful conduct of the named defendants. And it will be redressed by an injunction requiring the defendants to conduct at-large elections for Pennsylvania's congressional delegation unless and until the General Assembly enacts a new congressional map.

CLAIM FOR RELIEF

41. The Elections Clause provides:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const. art. 1, § 4, cl. 1 (emphasis added).

42. The Elections Clause forbids the defendants to implement a congressional map that was drawn by the Supreme Court of Pennsylvania, because the state supreme court is not part of “the Legislature,” and the General Assembly has not delegated any of its map-drawing powers to the state judiciary or authorized the state courts to involve themselves in the redistricting process in any way.

43. The Elections Clause also forbids the defendants to defy the requirements of 2 U.S.C. § 2a(c)(5), which requires Pennsylvania to hold at-large elections if the General Assembly fails to enact a new congressional map in time for the 2022 primary. *See* U.S. Const. art. 1, § 4, cl. 1 (allowing Congress to “make or alter” regulations for electing representatives). The Supreme Court of Pennsylvania is constitutionally forbidden to replace the fallback regime that Congress has established in 2 U.S.C. § 2a(c)(5) with a court-drawn map—and the state’s election officials are constitutionally obligated to implement 2 U.S.C. § 2a(c)(5) over any contrary command that might emanate from the state judiciary.

44. The Court should enter declaratory and injunctive relief that requires the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map.

45. The plaintiffs bring these claims under 42 U.S.C. § 1983, the Declaratory Judgment Act, and any implied rights of action that might exist under the Constitution of the United States or any election-related statute enacted by Congress.

DEMAND FOR RELIEF

46. The plaintiffs respectfully request that the court:
- a. declare that the Elections Clause and 2 U.S.C. § 2a(c)(5) require the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map;
 - b. enter a preliminary and permanent injunction that compels the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map;
 - c. award the plaintiffs costs and attorneys' fees under 42 U.S.C. § 1988;
 - d. grant all other relief that the Court may deem just, proper, or equitable.

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 20, 2022

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I 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
rwiygul@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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

William C. Toth Jr., et al.

Plaintiffs,

v.

Lehigh M. Chapman, et al.,

Defendants

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

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING
ORDER OR PRELIMINARY INJUNCTION**

On February 9, 2022, the Supreme Court of Pennsylvania announced that it was “suspending” the General Primary Election calendar codified in 25 Pa. Stat. §§ 2868 and 2873. *See* Exhibit 1. But the state’s election officials are constitutionally forbidden to disregard the primary-election calendar that the Pennsylvania legislature has established for congressional and senatorial elections. Under the U.S. Constitution, the “legislature” of each state is charged with prescribing the “times, places, and manner” of electing Senators and Representatives. *See* U.S. Const. art. I, § 4, cl. 1. The state judiciary has no authority to alter or “suspend” the primary-election calendar that the legislature has enacted, and it is constitutionally prohibited from doing so. The state supreme court’s attempt to “suspend” the legislature’s primary-election calendar is also inflicting irreparable injury by hindering Mr. Bognet’s and Mr.

Bashir’s campaigns, and by threatening Mr. Hall’s ability to fulfill his obligations as a member of the Susquehanna County Board of Elections. The Court should promptly order state officials to adhere to the General Primary Election calendar that the legislature enacted—as the Constitution requires—rather than the unconstitutional edict announced by Supreme Court of Pennsylvania.

The Supreme Court of Pennsylvania also intends to impose a court-drawn congressional map for the 2022 elections, because the General Assembly and Governor Wolf have been unable to agree on a new map in time for the primary. On Friday the state supreme court held oral argument on this matter, and it is clear that the Court intends to announce a court-drawn map to govern the 2022 congressional elections in the next few days or weeks. But any map imposed by the state supreme court will be flatly unconstitutional. The Elections Clause says that “the Legislature”—not the judiciary—must “prescribe” the manner of electing representatives, and the General Assembly has not authorized the state judiciary to draw congressional maps or participate in the redistricting process. If the General Assembly fails to enact a new congressional map in time for the 2022 primary elections, then the remedy is set forth in 2 U.S.C. § 2a(c)(5): The state’s congressional delegation shall be elected at-large.

Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: . . . (5) if there is a decrease in the number of Representatives and the number of districts in such State

exceeds such decreased number of Representatives, they shall be elected from the State at large.

2 U.S.C. § 2a(c). The court should order state election officials to conduct at-large elections for the state's 2022 congressional delegation, regardless of anything that the state supreme court might say, unless and until the General Assembly enacts a new congressional map.

FACTS

The state of Pennsylvania lost a congressional seat in the most recent decennial census. Before the 2020 census, Pennsylvania had 18 seats in the U.S. House of Representatives. But the results of the 2020 census left Pennsylvania with 17 seats, one less than before. *See* U.S. Dept. of Commerce, Table 1. Apportionment Population and Number of Representatives by State: 2020 Census.

On August 20, 2021, the census-block results of the 2020 Census were delivered to Governor Wolf and the leaders of the General Assembly. This allowed the legislature to begin the process of drawing a new congressional map. On December 15, 2021, the House State Government Committee approved a new congressional map (HB 2541), in a 14-11 vote. The General Assembly eventually passed HB 2541, but it was vetoed by Governor Wolf on January 26, 2022.

On December 17, 2021, eighteen voters filed a lawsuit in the Commonwealth Court of Pennsylvania, asking the state judiciary to impose a map for the 2022 congressional elections. *See* Exhibit 1. Later that day, a separate group

of twelve voters filed a similar lawsuit. The Commonwealth Court consolidated the two redistricting cases on December, 20, 2021, and the cases were assigned to Judge Patricia McCullough.

On December 21, 2021, the petitioners in those cases filed an application for extraordinary relief in the Supreme Court of Pennsylvania, asking the state supreme court to exercise extraordinary jurisdiction over the case. *See* Exhibit 2. On January 10, 2022, the state supreme court declined to invoke its extraordinary jurisdiction and denied the application for extraordinary relief without prejudice. *See* Exhibit 3.

On January 14, 2022, Judge McCullough ordered all parties and intervenors to submit proposed maps and expert reports by January 24, 2022. Judge McCullough also scheduled an evidentiary hearing for January 27 and 28, 2022, and announced that if the General Assembly “has not produced a new congressional map by January 30, 2022, the Court shall proceed to issue an opinion based on the hearing and evidence presented by the Parties.” *See* Exhibit 4. On January 26, 2022, Governor Wolf vetoed HB 2541, a congressional map that had been approved by the General Assembly. On January 27 and 28, 2022, Judge McCullough presided over the evidentiary hearings that had been scheduled in her order of January 14, 2022.

On January 29, 2022, the petitioners in the state redistricting lawsuit filed a new “emergency application” with the Supreme Court of Pennsylvania, asking the state supreme court to immediately exercise “extraordinary jurisdiction” and take over the redistricting litigation from Judge McCullough. *See*

Exhibit 5. On February 1, 2022, Judge McCullough announced that her ruling in the redistricting cases would issue no later than February 4, 2022.

On February 2, 2022, before Judge McCullough had issued her ruling, the Pennsylvania Supreme Court granted the application to exercise extraordinary jurisdiction. The state supreme court's order designated Judge McCullough to serve as a "Special Master," and instructed her to file with the Supreme Court of Pennsylvania, on or before February 7, 2022, "a report containing proposed findings of fact and conclusions of law supporting her recommendation of a redistricting plan from those submitted to the Special Master, along with a proposed revision to the 2022 election schedule/calendar." *See* Exhibit 6. Justice Mundy and Justice Brobson dissented from the state supreme court's order granting extraordinary relief and exercising extraordinary jurisdiction.

On February 7, 2022, Judge McCullough issued her findings and recommended that the map approved by the General Assembly (HB 2541) be used as the congressional map. *See* Exhibit 7. On February 9, 2022, the state supreme court issued an order sua sponte that purports to "suspend" the General Primary Election calendar codified in 25 Pa. Stat. §§ 2868 and 2873. *See* Exhibit 8. No litigant had asked the state supreme court to suspend the primary-election calendar or issue an order of that sort.

The state supreme court held oral arguments on Judge McCullough's findings and recommendation on February 18, 2022.

I. THE PLAINTIFFS ARE ENTITLED TO A TRO OR PRELIMINARY INJUNCTION

In deciding whether to issue a TRO or preliminary injunction, a Court must consider four factors: (1) whether the movant has “a reasonable probability of eventual success in the litigation”; (2) whether the movant “will be irreparably injured . . . if relief is not granted”; (3) “the possibility of harm to other interested persons from the grant or denial of the injunction”; and (4) “the public interest.” *Reilly v. City of Harrisburg*, 858 F.3d 173, 176–77 (3d Cir. 2017). All four factors favor relief.

A. The Plaintiffs Are Likely To Succeed On The Merits

The state supreme court’s order that “suspends” the General Primary Election is a flagrant violation of the Elections Clause. Under the Constitution, only “the Legislature” of a state may “prescribe” the manner of electing its Senators and Representatives. *See* U.S. Const. art. I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”). The state judiciary is not part of “the Legislature,” so it cannot “suspend” the congressional primary election calendar that the legislature has “prescribed”—and it cannot replace the legislatively enacted primary calendar with a calendar of its own choosing. Nor is there any statute or constitutional provision that purports to delegate the General Assembly’s power to prescribe the deadlines for congress-

sional primary elections to the state judiciary or any other institution of government. *See, e.g., Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015). The defendants must therefore enforce the General Primary Election calendar that “the Legislature” has “prescribed”—regardless of any edict that might emanate from the state judiciary. *See* U.S. Const. art. 1, § 4, cl. 1. The Court should promptly restore the legislatively prescribed primary calendar and enjoin the defendants from departing from it.

The state supreme court’s efforts to impose a court-drawn congressional map are equally unconstitutional. Under the Elections Clause of the U.S. Constitution, “the Legislature” of Pennsylvania must prescribe the “manner” by which its representatives are elected, while Congress “may at any time by Law make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1; *see also id.* (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”). The powers conferred by the Elections Clause include the prerogative to draw a new congressional map in response to the decennial census. *See Arizona State Legislature*, 576 U.S. 787.

The Pennsylvania legislature, however, has not yet enacted a congressional map for the 2022 elections. Although the General Assembly passed a new congressional map earlier this year, it was vetoed by Governor Wolf. *See Smiley v. Holm*, 285 U.S. 355 (1932) (redistricting legislation that is vetoed by the governor is not “prescribed . . . by the Legislature” within the meaning of the

Elections Clause). In the meantime, a group of litigants has repaired to state court in the hopes of inducing the Supreme Court of Pennsylvania to impose a congressional map for the 2022 elections—and the state supreme court held oral arguments on this matter on February 18, 2022. But the state supreme court is constitutionally forbidden to draw a map for the state’s congressional races, because the Elections Clause requires “the Legislature” (not the judiciary) to “prescribe” the manner of electing representatives, and the General Assembly has not authorized the state judiciary to draw congressional maps or participate in the redistricting process. The state judiciary must therefore wait for the General Assembly to act. And any attempt by the state judiciary to usurp the legislature’s constitutionally assigned role must be disregarded by state officials, who are compelled to honor the Elections Clause over any contrary edicts from a state court.

It is also too late for the Supreme Court of Pennsylvania to draw a congressional map for the 2022 elections without disrupting the election process that the state legislature has prescribed. Under Pennsylvania law, candidates for Congress are to begin circulating their nomination petitions on February 15, 2022, and their final day to obtain signatures to appear on the ballot is March 8, 2022. 25 Pa. Stat. § 2753. The state supreme court cannot impose a congressional map at this late date without cutting into the three-week period that the legislature has provided for obtaining the needed signatures to appear on the ballot. The state supreme court appears to have recognized as much, be-

cause its order on February 9, 2022, purports to “suspend” the General Primary Election calendar codified in 25 Pa. Stat. §§ 2868 and 2873, in flat contravention of the Elections Clause. *See* Exhibit 8. The defendants have also acknowledged in the state-court proceedings that a court-imposed map will lead to “disruption of the 2022 elections,” and that “changes to the 2022 election calendar” will become “necessary”:

The Secretary of the Commonwealth is Pennsylvania’s chief election official, and Respondents are both election administrators charged with ensuring that Pennsylvania’s elections are conducted in a fair, lawful, and orderly manner. Thus, in this litigation, Respondents’ roles are two-fold: (1) to provide the Court with information where necessary; and (2) to *minimize disruption of the 2022 elections* by keeping the Court and the other parties apprised of election schedules and potential alterations to those schedules. In keeping with those roles, Respondents respectfully submit these Exceptions to assist the Court in determining *what changes to the 2022 election calendar are feasible and necessary based on the existence of other deadlines and the demands of election administration*.

Respondents’ Exceptions Regarding The Special Master’s Proposed Revision To The 2022 Election Calendar/Schedule, *Carter v. Chapman*, No. 7 MM 2022 (Pa.) at 1 (emphasis added) (footnote omitted) (attached as Exhibit 9). The defendants have also warned the Supreme Court of Pennsylvania that a judicial order changing the primary date for the state’s congressional and senatorial elections “would be challenged under the Elections Clause.” *Id.* at 2. The defendants, however, have made no attempt to explain how the Elections Clause would allow the state judiciary to modify other statutory deadlines in

the General Primary Calendar, despite the fact that they have asked the Supreme Court of Pennsylvania to make extensive and far-reaching revisions to those deadlines. *See id.* at 5–14.

When it becomes impossible for a new map to be drawn without disrupting the calendars and deadlines that the legislature has prescribed, the state election officials (and the state judiciary) must obey the command of 2 U.S.C. § 2a(c)(5) and hold at-large elections:

Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: . . . (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

2 U.S.C. § 2a(c). The State has not yet been “redistricted in the manner provided by the law thereof,” because the General Assembly has not enacted a new congressional map and no court has imposed one. And because there is no longer time to draw a new congressional map given the deadlines prescribed in the General Primary Election calendar, the courts must order at-large elections as required by 2 U.S.C. § 2a(c)(5). *See Branch v. Smith*, 538 U.S. 254, 273–76 (2003) (plurality opinion of Scalia, J.) (holding that 2 U.S.C. § 2a(c) is triggered when “the election is so imminent that no entity competent to complete redistricting pursuant to state law . . . is able to do so without disrupting

the election process”). Having a court “suspend” or delay the primary-election calendar to accommodate the judicial creation of a new congressional map is not an option.

The Elections Clause also requires state election officials to implement the requirements of 2 U.S.C. § 2a(c)(5) if there is insufficient time to draw a new congressional map without altering the deadlines prescribed in the General Primary Election calendar. Congress, in enacting 2 U.S.C. § 2a(c)(5), has “ma[de] . . . Regulations” that govern the election of representatives pursuant to its authority under the Elections Clause, and the state officials are constitutionally obligated to follow this congressional command rather than any court-drawn map or “suspension” order. The Supreme Court of Pennsylvania is constitutionally forbidden to “suspend” or alter a congressional primary calendar that the legislature has prescribed, and it cannot remedy the failure to enact a new congressional map by disrupting the election process rather than ordering at-large elections under 2 U.S.C. § 2a(c)(5).

The notion that the Supreme Court of Pennsylvania can replace the fallback regime that Congress has established in 2 U.S.C. § 2a(c)(5) with a congressional map of its own creation violates the Constitution in at least two respects. First, it usurps the authority that the Elections Clause assigns to the state legislature, because the Elections Clause gives “the Legislature” and not the judiciary the power to “prescribe” the manner of electing representatives. Second, it usurps the authority that the Elections Clause confers upon Con-

gress, because Congress has enacted a statute requiring Pennsylvania’s representatives to be elected at large if the General Assembly fails to enact a map in time for the 2022 primary elections. The Court should therefore enter injunctive relief that compels the defendants to hold at-large elections for the 2022 Pennsylvania congressional delegation, notwithstanding any ruling that might issue from the Supreme Court of Pennsylvania, unless and until the General Assembly enacts a new congressional map.

B. The Plaintiffs Will Suffer Irreparable Harm Absent Relief From This Court

The plaintiffs are suffering irreparable harm from the defendants’ failure to obey the requirements of the Elections Clause and 2 U.S.C. § 2a(c). Plaintiffs Bognet and Bashir are candidates for Congress who have been unable to gather signatures for their nomination petitions, even though the legislatively prescribed calendar allowed them to begin doing so on February 15, 2022. *See* Bognet Decl. ¶ 17 (attached as Exhibit 10); Bashir Decl. ¶ 11 (attached as Exhibit 11). The purported “suspension” of the General Primary Calendar has also left their campaigns in limbo, as they have no idea where the congressional district lines will be drawn, who their voters will be, or who their primary and general-election opponents will be. *See* Bognet Decl. ¶¶ 4–9, 19; Bashir Decl. ¶¶ 3–6, 17. It has also hindered their fundraising. *See* Bognet Decl. ¶¶ 10–12; Bashir Decl. ¶¶ 8–10. These injuries are especially harmful to challengers who

are attempting to unseat incumbents, as challengers must act quickly to establish name recognition and organize an effective campaign. *See* Bognet Decl. ¶¶ 13–16.

Plaintiff Alan Hall is also suffering irreparable harm as a member of the Susquehanna County Board of Elections. Mr. Hall is currently unable to prepare for the upcoming May 2022 primary because the defendants are refusing to implement the at-large congressional elections required by 2 U.S.C. § 2a(c)(5), and are instead waiting on the Supreme Court of Pennsylvania to impose an unconstitutional court-drawn map. *See* Hall Decl. ¶ 5 (attached as Exhibit 12). Mr. Hall’s office has no idea when it will begin receiving nominating petitions, because the defendants are complying with the state supreme court’s unconstitutional “suspension” of the General Primary Calendar—rather than obeying the Elections Clause, which requires state officials to honor the calendar that “the Legislature” has “prescribed.” U.S. Const. art. I, § 4, cl. 1; *see also* Hall Decl. ¶ 7. The defendants are also threatening Mr. Hall’s ability to comply with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which requires his office to send absentee ballots to overseas military members at least 45 days before the primary election. *See* 52 U.S.C. § 20302(a)(8)(A); Hall Decl. ¶ 10. None of these injuries can be compensated with monetary relief after trial, as each of the defendants enjoys sovereign immunity from damages. *See Marland v. Trump*, 498 F. Supp. 3d 624, 642 (E.D. Pa. 2020).

C. The Balance Of Equities Favors A TRO Or Preliminary Injunction

The third factor requires a court to consider the balance of equities, which includes consideration of harms to others from the grant or denial of an injunction. *See Reilly v. City of Harrisburg*, 858 F.3d 173, 176–78 (3d Cir. 2017). But the unconstitutionality of the defendants’ conduct is clear, and the need to enforce the commands of the Elections Clause outweighs any harms that might befall others from an injunction. *See Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 597 (3d Cir. 2002) (“[T]he more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor.” (citation and internal quotation marks omitted)). There will be doubtless be some congressional candidates and voters who will benefit from an unconstitutional map drawn by the Supreme Court of Pennsylvania—and who will therefore be harmed by an injunction that compels the defendants to follow the Elections Clause rather than the edicts of the Pennsylvania judiciary. But other candidates and voters will benefit from the proposed injunction, and the Constitution trumps in these situations.

D. The Public Interest Favors A TRO Or Preliminary Injunction

A preliminary injunction will ensure that the Constitution and federal statutes are obeyed, which is by definition in the public interest. *See Osorio-Martinez v. Attorney Gen. United States of Am.*, 893 F.3d 153, 179 (3d Cir. 2018); *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 884 (3d Cir. 1997).

II. THE COURT SHOULD EXPEDITE CONSIDERATION OF THIS MOTION

According to the General Primary Election calendar, the nominating petitions should have begun circulating on Tuesday, February 15, 2022. The unconstitutional “suspension” of the legislatively prescribed calendar should be rectified as soon as possible. We respectfully ask the Court to grant an immediate TRO and instruct the defendants to respond within seven days of this filing.

CONCLUSION

The motion for TRO or preliminary injunction should be granted. The Court should expedite its consideration of this motion.

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 20, 2022

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I 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
rwiygul@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

Lalitha D. Madduri*
Christina A. Ford*
Jyoti Jasrasaria*
Elias Law Group LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
lmadduri@elias.law
cford@elias.law
jjasrasaria@elias.law
T: (202) 968-4490

Counsel for Petitioners

* *Pro hac vice* forthcoming

Abha Khanna*
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
T: (206) 656-0177

Matthew Gordon*
Perkins Coie LLP
1201 Third Avenue Suite 4900
Seattle, WA 98101
MGordon@perkinscoie.com
T: (206) 359-3552

Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROW; WILLIAM TUNG; ROSEANNE
MILAZZO; BURT SIEGEL; SUSAN CASSANELLI; LEE
CASSANELLI; LYNN WACHMAN; MICHAEL
GUTTMAN; MAYA FONKEU; BRADY HILL; MARY
ELLEN BALCHUNIS; TOM DEWALL; STEPHANIE
MCNULTY; and JANET TEMIN,

Petitioners,

v.

VERONICA DEGRAFFENREID, in her official capacity as
the Acting Secretary of the Commonwealth of Pennsylvania;
JESSICA MATHIS, in her official capacity as Director for
the Pennsylvania Bureau of Election Services and Notaries,

Respondents.

No.

PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

INTRODUCTION

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

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

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

3. These changes render Pennsylvania's current congressional districts both unlawful and unconstitutional. Specifically, the current configuration of Pennsylvania's congressional districts violates (1) the Free and Equal Elections Clause of the Pennsylvania Constitution, which guarantees its citizens the right to "make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share." *Patterson v. Barlow*, 60 Pa. 54, 75 (1869); (2) Article I, Section 2 of the U.S. Constitution's requirement that states "achieve population equality 'as nearly as is practicable'" when drawing congressional districts. *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting

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

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

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

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

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

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

JURISDICTION AND VENUE

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

PARTIES

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

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

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

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

II. The 2020 Census is complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Pennsylvania needs a lawful congressional map imminently.

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

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

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

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

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

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

CLAIMS FOR RELIEF

COUNT I

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

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

50. The Pennsylvania Constitution's Free and Equal Elections Clause provides: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const., Art. I, § 5. This clause "should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people's power to do so." *League of Women Voters I*, 178 A.3d at 814.

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

52. The "equality" prong of the Free and Equal Elections Clause requires that voting districts be drawn "by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that

some shall not have more votes than others, and that all shall have an equal share.” *Id.* at 809 (quoting *Patterson*, 60 Pa. at 75). Thus, any scheme that “has the effect of impermissibly diluting the potency of an individual’s vote for candidates for elective office relative to that of other voters will violate the guarantee of ‘free and equal’ elections afforded by Article I, Section 5.” *Id.*

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

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

COUNT II

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

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

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

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

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

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

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

COUNT III

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

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

successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Pennsylvania's current congressional district plan;

- c. Adopt a new congressional district plan that complies with Article I, Section 5 of the Pennsylvania Constitution; Article I, Section 2 of the U.S. Constitution; and 2 U.S.C. § 2.
- d. Award Petitioners their costs, disbursements, and reasonable attorneys' fees; and
- e. Grant such other and further relief as the Court deems just and proper.

Dated: December 17, 2021

Lalitha D. Madduri*
Christina A. Ford*
Jyoti Jasrasaria*
Elias Law Group LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
lmadduri@elias.law
cford@elias.law
jjasrasaria@elias.law
T: (202) 968-4490

Abha Khanna*
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
T: (206) 656-0177

Respectfully submitted,

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

* *pro hac vice* forthcoming

Matthew Gordon*
Perkins Coie LLP
1201 Third Avenue Suite 4900
Seattle, WA 98101
MGordon@perkinscoie.com
T: (206) 359-3552

RETRIEVED FROM DEMOCRACYDOCKET.COM

VERIFICATION

I, Rebecca Poyourow, hereby state:

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

Signed:



A handwritten signature in black ink, appearing to read 'Rebecca Poyourow', is written over a horizontal line. The signature is cursive and somewhat stylized.

RETRIEVED FROM DEMOCRACYDOCKET.COM

NOTICE TO PLEAD

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

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

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

Dated: December 17, 2021

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

CERTIFICATE OF SERVICE

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

By Certified Mail:

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

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

By Certified Mail and PACFile:

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

Dated: December 17, 2021

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

IN THE SUPREME COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROW; WILLIAM TUNG; ROSEANNE
MILAZZO; BURT SIEGEL; SUSAN CASSANELLI; LEE
CASSANELLI; LYNN WACHMAN; MICHAEL
GUTTMAN; MAYA FONKEU; BRADY HILL; MARY
ELLEN BALCHUNIS; TOM DEWALL; STEPHANIE
MCNULTY; and JANET TEMIN,

Petitioners,

v.

VERONICA DEGRAFFENREID, in her official capacity as
the Acting Secretary of the Commonwealth of Pennsylvania;
JESSICA MATHIS, in her official capacity as Director for
the Pennsylvania Bureau of Election Services and Notaries,

Respondents.

No. _____

**APPLICATION FOR EXTRAORDINARY RELIEF UNDER
42 PA. C.S. § 726 AND PA. R.A.P. 3309**

RETRIEVED FROM DEMOCRACYDOCS.COM

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	3
I. The Commonwealth Court dismissed Petitioners’ initial Petition on the grounds that a political impasse was not yet certain.	3
II. It is now clear that Pennsylvania’s political branches will not timely pass a new congressional plan.....	5
ARGUMENT	7
I. This case presents an immediate issue of public importance.....	7
II. This Court previously exercised its extraordinary jurisdiction to implement new reapportionment plans.....	9
CONCLUSION.....	11

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Arrington v. Elections Bd.</i> , 173 F. Supp. 2d 856 (E.D. Wis. 2001)	7
<i>Bd. of Revision of Taxes v. City of Phila.</i> , 4 A.3d 610 (Pa. 2010)	6, 7, 8, 9
<i>Commonwealth v. Morris</i> , 771 A.2d 721 (Pa. 2001)	8
<i>Gray v. Sanders</i> , 372 U.S. 368 (1963)	7
<i>Kirkpatrick v. Preisler</i> , 394 U.S. 526 (1969)	7
<i>League of Women Voters of Pa. v. Commonwealth</i> , 181 A.3d 1083 (Pa. 2018)	2, 9, 10
<i>Mellow v. Mitchell</i> , 607 A.2d 204 (Pa. 1992)	2, 9
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964)	2, 7
Statutes	
42 Pa. C.S. § 726	6
2 U.S.C. § 2c	8

INTRODUCTION

In just a few short weeks, Pennsylvania's voters, congressional candidates, and its Department of State need a final and legally binding constitutional congressional reapportionment plan. But there is no such plan in sight. Last week, the General Assembly adjourned for the remainder of 2021 without passing a new constitutional congressional plan and will not reconvene until next year. This delay means that it is now impossible for Pennsylvania's political branches to reach agreement on a congressional plan by the end of December 2021, the time the Department of State explained would be necessary for the political branches to have enacted a map for the 2022 elections to proceed on time.

Nearly eight months ago, anticipating such an impasse, Petitioners filed an action in the Commonwealth Court alleging malapportionment in Pennsylvania's current congressional districts and asking the Commonwealth Court to establish a schedule so that it could be ready to adopt a new constitutional congressional reapportionment plan when the political branches inevitably failed to do so. The Commonwealth Court dismissed that action in early October, finding it premature. The Commonwealth Court further noted that there was no need to start the proceedings at that time, because when called upon in prior cycles after the political branches reached an impasse, the Pennsylvania Supreme Court had repeatedly adopted new congressional districts for the Commonwealth in very short order.

That time has come again. There can be no serious argument at this point that Petitioners' request is premature. And given the little time remaining before statutory filing deadlines, it is incumbent upon this Court to act swiftly and exercise its extraordinary jurisdiction to expeditiously adopt a constitutional and lawful congressional plan under which the Commonwealth may proceed with its elections.

The last time Pennsylvania's judiciary was required to remedy an impasse following the decennial census, this Court quickly exercised extraordinary jurisdiction over the case. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992). This time, too, there is no question that the issue is of immediate and crucial public importance—the new reapportionment plan will affect every Pennsylvania voter and every candidate who intends to run to represent the Commonwealth. And Petitioners' rights are unquestionably clear: continued malapportionment would violate not only the Pennsylvania Constitution, but also the “[U.S.] Constitution’s plain objective of [] equal representation for equal numbers. . . .” *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964).

As this Court has previously recognized, “[w]hen the legislature is unable or chooses not to act, it becomes the judiciary’s role to ensure a valid districting scheme.” *League of Women Voters of Pa. v. Commonwealth*, 181 A.3d 1083, 1086 n.6 (Pa. 2018). That is precisely where we find ourselves today. Petitioners need a remedy now. Given the short time remaining to adopt a new plan, Petitioners

respectfully request that this Court swiftly exercise its discretion to take this case and render its independent judgment on a matter of immediate public importance to the citizens of the Commonwealth.

BACKGROUND

I. The Commonwealth Court dismissed Petitioners' initial Petition on the grounds that a political impasse was not yet certain.

The same day the U.S. Census Bureau publicly released its apportionment counts in April 2021, Petitioners filed their first petition for review in the Commonwealth Court. *See* Pet. for Review (attached as Exhibit A). There, as here, Petitioners explained that Pennsylvania's congressional districts are now unconstitutionally malapportioned because of significant population shifts in the past decade, *see* Ex. A ¶¶ 22-28. Petitioners anticipated that Pennsylvania's political branches would not resolve this malapportionment timely in advance of the 2022 elections and filed their Petition expeditiously, hoping to give the Commonwealth Court adequate opportunity to hear their claims and ample time to adopt a new congressional apportionment plan for Pennsylvania. At the time, the political branches had not yet reached an impasse over congressional redistricting, but Petitioners alleged that such an impasse was highly likely given Pennsylvania's deep political divisions and inability to enact a congressional redistricting plan just three years ago. *See id.* ¶¶ 7-8. Petitioners asked the Commonwealth Court to (1) declare Pennsylvania's current congressional districts unlawful and unconstitutional; (2)

enjoin Respondents from giving effect to those district boundaries; (3) establish a schedule that would enable the Court “to adopt and implement a new congressional district plan by a date certain should the political branches fail to enact such plan by that time”; and (4) implement a new, constitutional congressional reapportionment plan if the political branches failed to enact a plan by such a date. *See id.* at Prayer for Relief.

As the case proceeded, the Commonwealth Court permitted Pennsylvania’s Legislative Leaders to intervene. The Legislative Leaders contested the whole scope of the Petition, including Petitioners’ standing, the ripeness of the case, and the merits of their claims. The State Respondents also contested the Petitioners’ standing and the ripeness of the case—contending that it was not yet clear that an impasse would occur—but they agreed with Petitioners that “timely congressional redistricting [] is necessary to protect th[e] right to vote” and that “if the political branches of Pennsylvania’s government fail to carry out that redistricting, the courts will be required to step in.” State Resp’ts’ Br. at 1 (Ex. B).

The State Respondents further explained: “[T]o ensure efficient election administration, allow for timely notice to candidates, and permit proper implementation of the new congressional districts, Respondents believe that the Department of State must receive a final and legally binding congressional district map no later than January 24, 2022,” and that they believed a new plan “must be

signed into law by the end of December 2021” to permit adequate time for judicial review. *Id.* at 5.

Ultimately, the Commonwealth Court agreed with the State Respondents and dismissed the Petition as unripe, holding Petitioners lacked standing. Specifically, the Commonwealth Court explained (in early October) that there was still “ample time for the lawmakers to act,” that an impasse was not certain, and thus Petitioners might never face injury to their voting rights. Order at 10, 15 (Ex. C). The Commonwealth Court noted, however, that if an impasse did arise, that Pennsylvania’s Supreme Court had previously demonstrated “its ability to move swiftly to implement remedial congressional districting plans,” citing this Court’s resolution of Pennsylvania’s 1990 cycle impasse, as well as its swift implementation of remedial congressional plans just three years ago. *See id.* at 11. Dismissal was without prejudice, and the Commonwealth Court explicitly recognized “that there may come a time when Petitioners’ claims ripen, and they will have standing to pursue their claims in the Petition.” *Id.* at 16 n.1.

II. It is now clear that Pennsylvania’s political branches will not timely pass a new congressional plan.

After the Pennsylvania General Assembly adjourned for the 2021 legislative session without passing a new constitutional congressional plan, Petitioners filed a new Petition in the Commonwealth Court, docketed at No. 464 M.D. 2021. The new Petition makes similar allegations to those in the first Petition but now explains that

the political branches indeed *have* failed to timely enact congressional plans that would allow Pennsylvania to complete 2022 elections in an orderly fashion. *See* Pet ¶¶ 5-6, 36-43 (Ex. D).¹

While the Commonwealth Court has entered a scheduling order in the case (attached as Ex. E), that schedule does not permit sufficient time—let alone any time—for this Court’s review. Indeed, the Commonwealth Court’s scheduling order indicates that evidentiary hearings on proposed plans will begin a full week *after* the Department of State has said it needs a final map. *See* Ex. E. The scheduling order also already expressly acknowledges that it may push back Pennsylvania’s statutory election-related deadlines to accommodate the delay in implementing a new congressional plan.

Under these circumstances, this Court must act as it has in the past and fulfill its duty to ensure that the voters of Pennsylvania have a lawful, constitutional map in place for the coming election. It must (1) declare Pennsylvania’s current congressional districts unlawful and unconstitutional; (2) enjoin Respondents from giving effect to those district boundaries; and (3) implement a new, constitutional congressional reapportionment plan. *See* Ex. D at Prayer for Relief.

¹ The Commonwealth Court subsequently consolidated the new Petition with *Gresman v. Degraffenreid*, No. 465 M.D. 2021 and designated this case, 464 M.D. 2021, as the lead case.

ARGUMENT

Under 42 Pa. C.S. § 726, “[t]his Court may assume, at its discretion, plenary jurisdiction over a matter of immediate public importance that is pending before another court of this Commonwealth.” *Bd. of Revision of Taxes v. City of Phila.*, 4 A.3d 610, 620 (Pa. 2010). Just as it has done in the past to resolve redistricting deadlocks, this Court should exercise its extraordinary jurisdiction to ensure Pennsylvania has constitutional congressional districts for the 2022 elections. This Court’s swift intervention is necessary to protect the constitutional rights of millions of Pennsylvania voters.

I. This case presents an immediate issue of public importance.

The Department of State has said it needs to have a final, legally binding congressional reapportionment plan in less than 35 days so that it can stand ready to timely conduct Pennsylvania’s congressional primary and general elections in 2022. *See* Ex. B. at 5. But there is no such plan today, and time is running out.

Extraordinary jurisdiction is particularly appropriate where (1) Petitioners’ rights are clear and (2) the ordinary litigation process is insufficient to timely remedy Petitioners’ rights. *Bd. of Revision*, 4 A.3d at 620. Both factors are plainly met here.

First, Petitioners’ legal rights are clear; there can be no dispute that continuation of the status quo is unconstitutional. Article I, Section 2 of the United States Constitution requires congressional districts to be as equivalent in population

as possible “to prevent debasement of voting power and diminution of access to elected representatives.” *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969). This constitutional mandate is commonly referred to as the “one person, one vote principle.” *Gray v. Sanders*, 372 U.S. 368, 381 (1963). The 2020 Census data makes clear that the configuration of Pennsylvania’s congressional districts does not account for the current population numbers in the state, violating the “Constitution’s plain objective of [] equal representation for equal numbers.” *Wesberry*, 376 U.S. at 18; *see also Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge panel) (“[A]pportionment schemes become ‘instantly unconstitutional’ upon the release of new decennial census data.” (citation omitted)). Pennsylvania’s current congressional districts are thus unconstitutionally malapportioned, and any future use of those districts would violate Petitioners’ rights. Separately, because Pennsylvania has been allocated one fewer congressional district than it was in the prior decade, any future use of Pennsylvania’s current congressional districts would also violate 2 U.S.C. § 2c. *See* Ex. D ¶¶ 31-35.

Second, this is a case in which the “ordinary” or “normal” litigation process will be insufficient to timely remedy Petitioners’ rights. In exercising its discretion regarding extraordinary jurisdiction, this Court considers the immediacy of the issue raised, *Bd. of Revision*, 4 A.3d at 620—that is, whether there is some intervening need to expedite the proceeding and truncate the normal judicial process, *see*

Commonwealth v. Morris, 771 A.2d 721, 731 (Pa. 2001). This is such a case. Under the Commonwealth Court’s schedule, no decision will issue until at least a week after the Department of State’s January 24 deadline for a final map. And even if the Commonwealth Court finalized its own congressional plan by February 1, the first day after it holds an evidentiary hearing on the parties’ proposed plans, there is no guarantee Petitioners could seek review from this Court in time for the 2022 elections. A case that will determine Pennsylvania’s congressional reapportionment plan for the next decade is far too important to evade this Court’s review. At best, review by this Court after the Commonwealth Court would likely require pushing back Pennsylvania’s statutory deadlines for the 2022 elections, something the Court should only do as a last resort.

This Court’s extraordinary jurisdiction powers, which give the Court “broad authority to craft meaningful remedies,” was made for a case just like this one. *League of Women Voters of Pa.*, 181 A.3d at 1086 n.6. As this Court has already recognized, “[s]wift resolution” of matters such as these is essential to “promote confidence in the authority and integrity of [this Commonwealth’s] institutions.” *Bd. of Revision*, 4 A.3d at 620.

II. This Court previously exercised its extraordinary jurisdiction to implement new reapportionment plans.

In asking this Court to exercise extraordinary jurisdiction over this action, Petitioners are not asking this Court to do something it has not done before. The last

time Pennsylvania's judiciary was required to remedy an impasse following the decennial census, this Court exercised extraordinary jurisdiction over the case to ensure Pennsylvania would have a constitutional reapportionment plan for the 1990 redistricting cycle. *See Mellow*, 607 A.2d at 204.

In *Mellow*, just as in this case, the Petitioners initially filed their case in the Commonwealth Court. Almost immediately after filing that Petition, the *Mellow* Petitioners sought plenary jurisdiction from this Court, and this Court accepted jurisdiction promptly. *Id.* at 206.

Similarly, just three years ago, in *League of Women Voters of Pa. v. Commonwealth*, this Court exercised its extraordinary jurisdiction powers to ensure Pennsylvania would have constitutional congressional plans for the 2018 election cycle. *See* 181 A.3d 1083 (Pa. 2018). After this Court found Pennsylvania's existing reapportionment plan to be an unconstitutional partisan gerrymander, it gave Pennsylvania's political branches an opportunity to remedy those plans. When they failed to do so, this Court moved to implement its own reapportionment plan, explaining: "[I]t has become the judiciary's duty to fashion an appropriate remedial districting plan, and this Court has proceeded to prepare such a plan, a role which our Court has full constitutional authority and responsibility to assume." *Id.* at 1086. The Court should do the same here. The Commonwealth cannot wait any longer for a new congressional reapportionment plan.

CONCLUSION

For these reasons, Petitioners respectfully request this Court exercise its extraordinary jurisdiction over this matter and implement proceedings to ensure timely resolution of this case before the 2022 congressional elections.

To that end, Petitioners propose the following schedule, which would allow the Court to render a decision by January 24, 2022:

Event	Date
Joinders or Interventions	December 27, 2021
Answers to Intervention	January 3, 2021
Parties' Proposed Congressional Plans and Briefs in Support	January 10, 2022
Parties' Opposition Briefs	January 17, 2022
Oral Argument	January 21, 2022
Court's Decision	January 24, 2022

Dated: December 21, 2021

Abha Khanna*
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
T: (206) 656-0177

Lalitha D. Madduri*
Christina A. Ford*
Jyoti Jasrasaria*
Elias Law Group LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
lmadduri@elias.law
cford@elias.law
jjasrasaria@elias.law
T: (202) 968-4490

Matthew Gordon*
Perkins Coie LLP
1201 Third Avenue Suite 4900
Seattle, WA 98101
MGordon@perkinscoie.com
T: (206) 359-3552

Respectfully submitted,

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

**pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Application for Extraordinary Relief be served upon the following parties by first class mail, which service satisfies the requirements of Pa. R.A.P. 3309 and 121:

Kim M. Watterson
Reed Smith LLP
225 5TH Ave Ste 1200
Pittsburgh, PA 15222-2716
Counsel for Petitioners Gressman et al., No. 465 MD 2021

Robert Andrew Wiygul
Hangley, Aronchick, Segal, Pudlin & Schiller
18th Cherry Sts Fl 27
Philadelphia, PA 19103
*Counsel for Director Jessica Mathis and
Acting Secretary Veronica Degraffenreid*

Kathleen Kotula
401 North Street, Room 301
Harrisburg, PA 17120-0500

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

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

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

Office of the Prothonotary, Commonwealth Court
Michael F. Krimmel, Prothonotary
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 2100
P.O. Box 69185
Harrisburg, PA 17106

Dated: December 21, 2021

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit A

RETRIEVED FROM DEMOCRACYDOCKET.COM

Marc E. Elias
Aria C. Branch
Lalitha D. Madduri
Christina A. Ford
Jyoti Jasrasaria
Perkins Coie LLP
700 Thirteenth Street NW Suite 800
Washington, D.C. 20005-3960
MElias@perkinscoie.com
ABranch@perkinscoie.com
LMadduri@perkinscoie.com
ChristinaFord@perkinscoie.com
JJasrasaria@perkinscoie.com
T: (202) 654-6200
F: (202) 654-6211

Abha Khanna
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
AKhanna@perkinscoie.com
T: (206) 359-8000
F: (206) 359-9000

Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROW; WILLIAM TUNG; ROSEANNE
MILAZZO; BURT SIEGEL; SUSAN CASSANELLI; LEE
CASSANELLI; LYNN WACHMAN; MICHAEL
GUTTMAN; MAYA FONKEU; BRADY HILL; MARY
ELLEN BALCHUNIS; TOM DEWALL; STEPHANIE
MCNULTY; and JANET TEMIN,

Petitioners,

v.

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

No.

the Pennsylvania Bureau of Election Services and Notaries,
Respondents.

PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

Commonwealth officials in their official capacities.

PARTIES

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

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

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

13. Respondent Veronica Degraffenreid is the Acting Secretary of the

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

II. The 2020 Census is complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A.3d at 1086.

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

CLAIMS FOR RELIEF

COUNT I

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

34. Petitioners reallege and reincorporate by reference all prior paragraphs

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

35. The Pennsylvania Constitution's Free and Equal Elections Clause provides: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const., Art. I, § 5. This clause "should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people's power to do so." *League of Women Voters I*, 178 A.3d at 814.

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

37. The "equality" prong of the Free and Equal Elections Clause requires that voting districts be drawn "by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share." *Id.* at 809 (quoting *Patterson*, 60 Pa. at 75). Thus, any scheme that "has the effect of impermissibly diluting the potency of an individual's vote for candidates for elective office relative to that of other voters will violate the guarantee of 'free and equal' elections afforded by Article I, Section 5." *Id.*

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

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

COUNT II

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

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

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

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

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

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

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

COUNT III

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

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

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

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

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

COUNT IV

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

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

50. The Pennsylvania Constitution’s Petition Clause provides: “The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.” Pa. Const., Art. I, § 20. “The Pennsylvania Constitution affords greater protection of

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

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

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

Dated: April 26, 2021

Respectfully submitted,

Marc E. Elias
Aria C. Branch
Lalitha D. Madduri
Christina A. Ford
Jyoti Jasrasaria
Perkins Coie LLP
700 Thirteenth Street NW Suite 800
Washington, D.C. 20005-3960
MElias@perkinscoie.com
ABranch@perkinscoie.com
LMadduri@perkinscoie.com
ChristinaFord@perkinscoie.com
JJasrasaria@perkinscoie.com
T: (202) 654-6200
F: (202) 654-6211

Abha Khanna
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
AKhanna@perkinscoie.com
T: (206) 359-8000
F: (206) 359-9000

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

CERTIFICATE OF COMPLIANCE

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

Submitted by: Edward D. Rogers

Signature: /s/ Edward D. Rogers

Name: Edward D. Rogers

Attorney No.: 69337

RETRIEVED FROM DEMOCRACYDOCK.COM

VERIFICATION

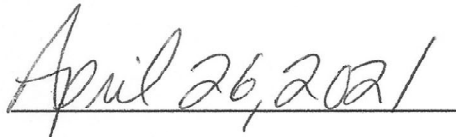
I, Carol Ann Carter, hereby state:

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

Signed:

A handwritten signature in black ink, appearing to read "Carol Ann Carter", written over a horizontal line.

Dated:

A handwritten date "April 26, 2021" written in black ink over a horizontal line.

NOTICE TO PLEAD

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

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

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

Dated: April 26, 2010

/s/ Robert J. Clark
Robert J. Clark, No. 308105
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
Clarkr@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

CERTIFICATE OF SERVICE

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

By Certified Mail:

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

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

Dated: April 26, 2021

/s/ Robert J. Clark
Robert J. Clark, No. 308105
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
Clarkr@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

Exhibit B

*HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER*
Michele D. Hangley (I.D. No. 82779)
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103-6933
(215) 568-6200

OFFICE OF ATTORNEY GENERAL
Karen M. Romano (I.D. No. 88848)
Keli M. Neary (I.D. No. 205178)
Caleb Enerson (I.D. No. 313832)
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-2717

*PENNSYLVANIA GOVERNOR'S
OFFICE OF GENERAL COUNSEL*
Kenneth L. Joel (I.D. No. 72370)
333 Market Street, 17th Floor
Harrisburg, PA 17101
(717) 787-9348

*PENNSYLVANIA DEPARTMENT OF
STATE*
Kathleen M. Kotula (I.D. No. 318947)
306 North Office Bldg., 401 North Street
Harrisburg, PA 17120-0500
(717) 783-1657

TUCKER LAW GROUP, LLC
Joe H. Tucker, Jr. (I.D. No. 56617)
Dimitrios Mavroudis (I.D. No. 93773)
Jessica A. Rickabaugh (I.D. No. 200189)
1801 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 875-0609

Counsel for Respondents

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

v.

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

No. 132 MD 2021

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

TABLE OF CONTENTS

I. INTRODUCTION1

II. STATEMENT OF JURISDICTION2

III. STATEMENT OF THE CASE.....2

IV. STATEMENT OF THE QUESTIONS INVOLVED.....6

V. ARGUMENT6

VI. CONCLUSION.....10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Arrington v. Elections Board</i> , 173 F. Supp. 2d 856 (E.D. Wisc. 2001).....	9
<i>Bayada Nurses, Inc. v. Department of Labor and Industry</i> , 8 A.3d 866 (Pa. 2010).....	6
<i>Garcia v. 2011 Legislative Reapportionment Commission</i> , 559 Fed. Appx. 128 (3d Cir. 2014).....	10
<i>League of Women Voters v. Commonwealth</i> , 178 A.3d 737 (Pa. 2018).....	5
<i>Markham v. Wolf</i> , 136 A.3d 134 (Pa. 2016).....	6
<i>Philips Brothers Electrical Contractors, Inc. v. Pennsylvania Turnpike Commission</i> , 960 A.2d 941 (Pa. Commw. Ct. 2008).....	7
<i>Pittsburgh Palisades Park, LLC v. Commonwealth</i> , 888 A.2d 655 (Pa. 2005).....	6, 8
<i>Robinson Township, Washington County v. Commonwealth</i> , 83 A.3d 901 (Pa. 2013).....	7
<i>Sachs v. Simon</i> , No. A21-0546 (Minn. Spec. Redistricting Panel Sept. 13, 2021), available at https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/A21-0243%202021%20Redistricting/A21-0243_Order-Briefing-Scheduling_9-13-2021.pdf	8
<i>Wattson v. Simon</i> , Nos. A21-0243 (Minn. Spec. Redistricting Panel Sept. 13, 2021), available at https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/A21-0243%202021%20Redistricting/A21-0243_Order-Briefing-Scheduling_9-13-2021.pdf	8, 9

Statutes

42 Pa. C.S. § 761(a)(1).....2

Act of Mar. 27, 2020 (P.L. 41, No. 12), 2020 Pa. Legis. Serv. Act
2020-12 (S.B. 422) (West).....5

Act of Oct. 31, 2019 (P.L. 552, No. 77), 2019 Pa. Legis. Serv. Act.
2019-77 (S.B. 421) (West).....4

Minn. Stat. Ann. § 204B.14(1a).....9

Other Authorities

Pa Congressional Redistricting PA House Republican Caucus, *Pa. Redistricting*, <http://www.paredistricting.com> (last visited on Sept. 16, 2021)6

United States Census Bureau, *2020 Redistricting Data Datasets* (Aug. 12, 2021), <https://www.census.gov/programs-surveys/decennial-census/data/datasets/rdo.html> (last visited on Sept. 16, 2021)6

Governor Tom Wolf, *Give Feedback on Pennsylvania Redistricting*, <https://www.governor.pa.gov/redistricting-feedback/> (last visited on Sept. 16, 2021).....6

Commonwealth of Pennsylvania Governor’s Office, *Executive Order* (Sept. 13, 2021), <https://www.governor.pa.gov/wp-content/uploads/2021/09/20210913-EO-2021-05-Redistricting-Advisory-Council.pdf> (last visited on Sept. 16, 2021).....6

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

I. INTRODUCTION

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

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

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

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

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

II. STATEMENT OF JURISDICTION

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

III. STATEMENT OF THE CASE

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

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

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

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

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

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

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

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

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

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

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

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

IV. STATEMENT OF THE QUESTIONS INVOLVED

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

Suggested Answer: Yes.

V. ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

VI. CONCLUSION

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

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: September 16, 2021

By: /s/ Michele D. Hangle

Michele D. Hangle (ID No. 82779)
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)

One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300

OFFICE OF ATTORNEY GENERAL

Karen M. Romano (I.D. No. 88848)
Keli M. Neary (I.D. No. 205178)
Caleb Enerson (I.D. No. 313832)
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-2717

PENNSYLVANIA GOVERNOR'S OFFICE
OF GENERAL COUNSEL

Kenneth L. Joel (I.D. No. 72370)
333 Market Street, 17th Floor
Harrisburg, PA 17101
(717) 787-9348

PENNSYLVANIA DEPARTMENT OF
STATE

Kathleen M. Kotula (I.D. No. 318947)
Kimberly A. Adams (I.D. No. 205848)
306 North Office Bldg., 401 North Street
Harrisburg, PA 17120-0500
(717) 783-1657

TUCKER LAW GROUP, LLC

Joe H. Tucker, Jr. (I.D. No. 56617)
Dimitrios Mavroudis (I.D. No. 93773)
Jessica A. Rickabaugh (I.D. No. 200189)
1801 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 875-0609

Counsel for Respondents

Exhibit C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter; Monica Parrilla;	:	
Rebecca Poyourow; William Tung;	:	
Roseanne Milazzo; Burt Siegel;	:	
Susan Cassanelli; Lee Cassanelli;	:	
Lynn Wachman; Michael Guttman;	:	
Maya Fonkeu; Brady Hill; Mary Ellen	:	
Balchunis; Tom DeWall; Stephanie	:	
McNulty; and Janet Temin,	:	
	:	
	:	
Petitioners	:	
	:	
	:	
v.	:	No. 132 M.D. 2021
	:	Argued: October 5, 2021
Veronica Degraffenreid, in her official	:	
capacity as the Acting Secretary of	:	
the Commonwealth of Pennsylvania;	:	
Jessica Mathis, in her official	:	
capacity as Director for the	:	
Pennsylvania Bureau of Election	:	
Services and Notaries,	:	
	:	
	:	
Respondents	:	

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

FILED: October 8, 2021

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

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

of the Commonwealth of Pennsylvania, Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries (collectively, Respondents), and Intervenors Speaker of the Pennsylvania House of Representatives Bryan Cutler, Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff, President Pro Tempore of the Pennsylvania Senate Jake Corman, and Majority Leader of the Pennsylvania Senate Kim Ward (collectively, Intervenors)² to Petitioners³ Petition for Review (Petition) addressed to this Court's original jurisdiction.⁴

I. Petition for Review

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

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

³ Petitioners are Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael Guttman, Maya Fonkeu; Brady Hill; Mary Ellen Balchunis, Tom DeWall, Stephanie McNulty, and Janet Temin.

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

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

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

As we detailed in the September 2, 2021 Memorandum Opinion,⁶ the Petition provides details regarding the results of the 2020 Census, the dates by which the U.S. Secretary of Commerce must provide the U.S. President and the states with the apportionment data, and the effect of the COVID-19 pandemic on the delivery of that data. The Petition further explains that, while the Commonwealth's population increased from the last decennial census, the 2020 Census shows that the Commonwealth will lose a representative seat in the U.S. House of Representatives. Starting with the upcoming 2022 elections, the Commonwealth will have 17 representatives in the U.S. House of Representatives, 1 fewer than the current 18 representatives. The Commonwealth's congressional district map must be redrawn to accommodate for the loss of a seat in the U.S. House of Representatives. Petitioners claim that the Commonwealth's current congressional districts are "unconstitutionally malapportioned" due to shifts in population within the Commonwealth. Petition, ¶2. They believe that the congressional districts in which they live are overpopulated, while other districts are underpopulated, and that, consequently, their votes for members of the U.S. House of Representatives are diluted. Petition, ¶¶18-21.

The Petition observes that Pennsylvania law does not set a deadline by which a new congressional district map must be put in place prior to the first congressional election following a census. According to Petitioners, it is in the best interest of voters, candidates, and the Commonwealth's entire electoral apparatus to have a new, final congressional district map in place prior to February 15, 2022, the

⁶ See *Carter*, slip op. at 3-6.

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

The Petition informs that the Commonwealth’s current congressional district map was drawn by the Pennsylvania Supreme Court in *League of Women Voters of Pennsylvania v. Commonwealth*, 181 A.3d 1083 (Pa. 2018) (*League of Women Voters III*), after the Republican-controlled General Assembly and Democratic Governor failed to agree upon a new congressional district map following the Supreme Court’s invalidation of the Commonwealth’s 2011 congressional district map. The current political climate has not changed since 2018, as Republican representatives maintain the majority in both houses of the General Assembly and Governor Tom Wolf is a Democrat. For these reasons, Petitioners contend that it is “unlikely” that the political branches of the government will agree upon a new congressional district map. Petition, ¶¶8, 29, 32, 42, 52.

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

⁷ Pa. Const. art. I, §5. Article I, Section 5 of the Pennsylvania Constitution, states: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

⁸ 2 U.S.C. §2c provides:

In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from

(Footnote continued on next page...)

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

districts so established, no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

⁹ Pa. Const. art. I, §20. Article I, Section 20 of the Pennsylvania Constitution provides: “The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.”

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

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty[-]five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four,

(Footnote continued on next page...)

For relief, Petitioners seek both declaratory and injunctive relief.

Specifically, they ask the Court to:

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

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

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

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

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

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

Petition at 21-22.

Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

II. Preliminary Objections

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

A. Standing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Ripeness

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

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

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

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

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

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

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

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

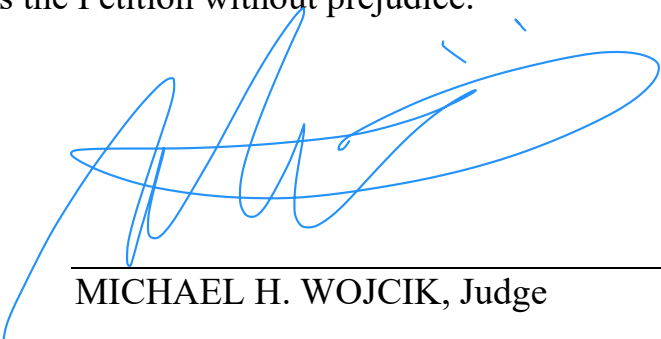
Additionally, Petitioners will not suffer any hardship if review is delayed. *Only if* the General Assembly and the Governor fail to adopt a new congressional district plan by an arbitrary deadline will the alleged constitutional and statutory violations occur. As this Court observed, "[a]t this juncture,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

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

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

III. Conclusion

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



MICHAEL H. WOJCIK, Judge

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

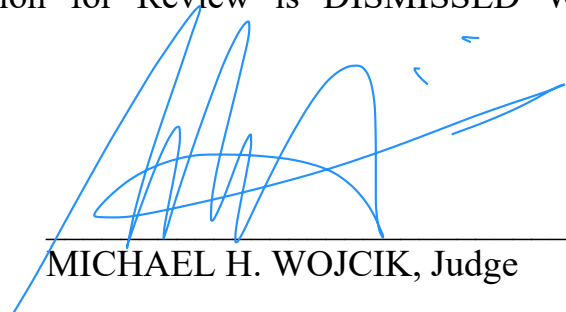
¹⁹ In light of this disposition, we decline to address Intervenors' additional POs.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter; Monica Parrilla; :
 Rebecca Poyourow; William Tung; :
 Roseanne Milazzo; Burt Siegel; :
 Susan Cassanelli; Lee Cassanelli; :
 Lynn Wachman; Michael Guttman; :
 Maya Fonkeu; Brady Hill; Mary Ellen :
 Balchunis; Tom DeWall; Stephanie :
 McNulty; and Janet Temin, :
 :
 :
 Petitioners :
 :
 v. : No. 132 M.D. 2021
 :
 :
 Veronica Degraffenreid, in her official :
 capacity as the Acting Secretary of :
 the Commonwealth of Pennsylvania; :
 Jessica Mathis, in her official :
 capacity as Director for the :
 Pennsylvania Bureau of Election :
 Services and Notaries, :
 :
 :
 Respondents :

ORDER

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



MICHAEL H. WOJCIK, Judge

Exhibit D

Lalitha D. Madduri*
Christina A. Ford*
Jyoti Jasrasaria*
Elias Law Group LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
lmadduri@elias.law
cford@elias.law
jjasrasaria@elias.law
T: (202) 968-4490

Counsel for Petitioners

* *Pro hac vice* forthcoming

Abha Khanna*
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
T: (206) 656-0177

Matthew Gordon*
Perkins Coie LLP
1201 Third Avenue Suite 4900
Seattle, WA 98101
MGordon@perkinscoie.com
T: (206) 359-3552

Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROW; WILLIAM TUNG; ROSEANNE
MILAZZO; BURT SIEGEL; SUSAN CASSANELLI; LEE
CASSANELLI; LYNN WACHMAN; MICHAEL
GUTTMAN; MAYA FONKEU; BRADY HILL; MARY
ELLEN BALCHUNIS; TOM DEWALL; STEPHANIE
MCNULTY; and JANET TEMIN,

Petitioners,

v.

VERONICA DEGRAFFENREID, in her official capacity as
the Acting Secretary of the Commonwealth of Pennsylvania;
JESSICA MATHIS, in her official capacity as Director for
the Pennsylvania Bureau of Election Services and Notaries,

Respondents.

No.

PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

INTRODUCTION

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

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

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

3. These changes render Pennsylvania’s current congressional districts both unlawful and unconstitutional. Specifically, the current configuration of Pennsylvania’s congressional districts violates (1) the Free and Equal Elections Clause of the Pennsylvania Constitution, which guarantees its citizens the right to “make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share.” *Patterson v. Barlow*, 60 Pa. 54, 75 (1869); (2) Article I, Section 2 of the U.S. Constitution’s requirement that states “achieve population equality ‘as nearly as is practicable’” when drawing congressional districts. *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting

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

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

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

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

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

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

JURISDICTION AND VENUE

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

PARTIES

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

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

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

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

II. The 2020 Census is complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Pennsylvania needs a lawful congressional map imminently.

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

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

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

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

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

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

CLAIMS FOR RELIEF

COUNT I

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

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

50. The Pennsylvania Constitution’s Free and Equal Elections Clause provides: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const., Art. I, § 5. This clause “should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people’s power to do so.” *League of Women Voters I*, 178 A.3d at 814.

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

52. The “equality” prong of the Free and Equal Elections Clause requires that voting districts be drawn “by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that

some shall not have more votes than others, and that all shall have an equal share.” *Id.* at 809 (quoting *Patterson*, 60 Pa. at 75). Thus, any scheme that “has the effect of impermissibly diluting the potency of an individual’s vote for candidates for elective office relative to that of other voters will violate the guarantee of ‘free and equal’ elections afforded by Article I, Section 5.” *Id.*

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

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

COUNT II

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

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

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

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

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

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

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

COUNT III

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

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

- successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Pennsylvania's current congressional district plan;
- c. Adopt a new congressional district plan that complies with Article I, Section 5 of the Pennsylvania Constitution; Article I, Section 2 of the U.S. Constitution; and 2 U.S.C. § 2.
- d. Award Petitioners their costs, disbursements, and reasonable attorneys' fees; and
- e. Grant such other and further relief as the Court deems just and proper.

Dated: December 17, 2021

Lalitha D. Madduri*
Christina A. Ford*
Jyoti Jasrasaria*
Elias Law Group LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
lmadduri@elias.law
cford@elias.law
jjasrasaria@elias.law
T: (202) 968-4490

Abha Khanna*
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
T: (206) 656-0177

Respectfully submitted,

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

* *pro hac vice* forthcoming

Matthew Gordon*
Perkins Coie LLP
1201 Third Avenue Suite 4900
Seattle, WA 98101
MGordon@perkinscoie.com
T: (206) 359-3552

VERIFICATION

I, Rebecca Poyourow, hereby state:

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

Signed:



A handwritten signature in black ink, appearing to read 'Rebecca Poyourow', is written over a horizontal line. The signature is cursive and extends to the right of the line.

NOTICE TO PLEAD

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

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

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

Dated: December 17, 2021

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

CERTIFICATE OF SERVICE

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

By Certified Mail:

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

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

By Certified Mail and PACFile:

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

Dated: December 17, 2021

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

Exhibit E

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter, Monica Parrilla, : **CASES CONSOLIDATED**
Rebecca Poyourow, William Tung, :
Roseanne Milazzo, Burt Siegel, :
Susan Cassanelli, Lee Cassanelli, :
Lynn Wachman, Michael Guttman, :
Maya Fonkeu, Brady Hill, Mary Ellen :
Balchunis, Tom DeWall, :
Stephanie McNulty and Janet Temin, :
Petitioners :

v. : No. 464 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania Bureau :
of Election Services and Notaries, :
Respondents :

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

v. : No. 465 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania Bureau :
of Election Services and Notaries, :
Respondents :

PER CURIAM

ORDER

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

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

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

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

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

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

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

CAROL ANN CARTER, MONICA : No. 141 MM 2021
PARRILLA, REBECCA POYOUROW, :
WILLIAM TUNG, ROSEANNE MILAZZO, :
BURT SIEGEL, SUSAN CASSANELLI, LEE :
CASSANELLI, LYNN WACHMAN, MICHAEL :
GUTTMAN, MAYA FONKEU, BRADY HILL, :
MARY ELLEN BALCHUNIS, TOM DEWALL, :
STEPHANIE MCNULTY AND JANET :
TEMIN, :

Petitioners

v.

VERONICA DEGRAFFENREID, IN HER :
OFFICIAL CAPACITY AS THE ACTING :
SECRETARY OF THE COMMONWEALTH :
OF PENNSYLVANIA; JESSICA MATHIS, IN :
HER OFFICIAL CAPACITY AS DIRECTOR :
FOR THE PENNSYLVANIA BUREAU OF :
ELECTION SERVICES AND NOTARIES, :

Respondents

ORDER

PER CURIAM

AND NOW, this 10th day of January, 2022, the Application for Extraordinary Relief is DENIED, WITHOUT PREJUDICE to Petitioners to reapply for similar relief in this Court, as future developments may dictate. Additionally, the denial is without prejudice to Petitioners to file an application in the Commonwealth Court, requesting that court to accelerate the timetable set forth in its December 20, 2021 scheduling order.

The Application for Leave to File Proposed Intervenor-Petitioners' Response and the Application to Intervene of Senator Jay Costa, et al., are DISMISSED AS MOOT.

Justice Wecht files a dissenting statement.

Justice Donohue notes her dissent.

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

CAROL ANN CARTER, MONICA : No. 141 MM 2021
PARRILLA, REBECCA POYOUROW, :
WILLIAM TUNG, ROSEANNE MILAZZO, :
BURT SIEGEL, SUSAN CASSANELLI, LEE :
CASSANELLI, LYNN WACHMAN, MICHAEL :
GUTTMAN, MAYA FONKEU, BRADY HILL, :
MARY ELLEN BALCHUNIS, TOM DEWALL, :
STEPHANIE MCNULTY AND JANET :
TEMIN, :

Petitioners

v.

VERONICA DEGRAFFENREID, IN HER :
OFFICIAL CAPACITY AS THE ACTING :
SECRETARY OF THE COMMONWEALTH :
OF PENNSYLVANIA; JESSICA MATHIS, IN :
HER OFFICIAL CAPACITY AS DIRECTOR :
FOR THE PENNSYLVANIA BUREAU OF :
ELECTION SERVICES AND NOTARIES, :

Respondents

DISSENTING STATEMENT

JUSTICE WECHT

FILED: January 10, 2022

I disagree with the Court’s decision not to assume plenary jurisdiction of this matter under the power of extraordinary jurisdiction we are granted by 42 Pa.C.S. § 726. The adoption of a congressional map that satisfies the dictates of state and federal law is of immediate public importance to the citizens of the Commonwealth,¹ and considerations

¹ *League of Women Voters v. Commonwealth*, 178 A.3d 737, 766-67 & n.35 (Pa. 2018).

occasioned by further delay of these proceedings counsel strongly in favor of this Court's intervention. Neither the parties nor the proposed intervenors object to the commencement of parallel judicial proceedings in furtherance of expediting a potential resolution while the political branches continue to seek agreement over a map that can be adopted by the General Assembly and signed into law by the Governor, which would render this case moot. Although redistricting "is primarily the duty and responsibility of the State through its legislature or other body,"² unless and until the political process produces such a map, this Court must be prepared to act to safeguard and vindicate the guarantee of "free and equal" elections and the equal protection of the law.³

Presently, our principal concern at this stage is time. The Commonwealth Court has established a deadline of January 30, 2022, for the political branches to adopt a congressional map, with court proceedings to follow should those branches fail to do so. For its part, the Department of State has indicated a preference for having a final map chosen by January 24. While neither of these dates is statutorily mandated, practically speaking any judicial resolution of this matter is temporally cabined by the election calendar, which is set forth in the Election Code. Pennsylvania's primary election is scheduled for May 17, 2022.⁴ Accordingly, the first day that candidates for Congress may circulate and file nomination petitions to seek a political party's nomination for those

² *Chapman v. Meier*, 420 U.S. 1, 27 (1975).

³ See Pa. Const. art. I, § 5; U.S. Const. amend. XIV.

⁴ See 25 P.S. § 2753(a) ("There shall be a General primary preceding each general election which shall be held on the third Tuesday of May in all even-numbered years, except in the year of the nomination of a President of the United States Candidates for all offices to be filled at the ensuing general election shall be nominated at the General primary.").

offices at the “General primary” is February 15, and they must be filed by March 8.⁵ Those seeking the nomination of political bodies may begin circulating nominating papers on March 9, with a filing deadline of August 1.⁶

Federal law provides something of a backstop in the event that a State fails to adopt a congressional map in accordance with the constitutionally mandated reapportionment process following a decennial census:

Until a State is redistricted in the manner provided by the law thereof after an apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: . . . (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

2 U.S.C. § 2a(c). Pennsylvania has not resorted to this method since that federal law was adopted. In fact, Pennsylvania has not elected the entirety of its congressional delegation using at-large districts since the eighteenth century. The Commonwealth utilized a statewide general ticket in 1788 for the First United States Congress, adopted congressional districts for the election of 1790, and then reverted to at-large elections in 1792 for the Third Congress. Although at-large elections occasionally were used to elect a handful of Representatives in the late nineteenth- and early-twentieth centuries—with no more than four members of Congress elected in that manner in a given election year—Congress reserved statewide general tickets for special use with the 1842 Apportionment Bill. Since 1967, States have been obligated to “establish[] by law a number of districts

⁵ See *id.* § 2868 (providing that “[n]o nomination petition shall be circulated prior to the thirteenth Tuesday before the primary, and no signature shall be counted unless it bears a date affixed not earlier than the thirteenth Tuesday nor later than the tenth Tuesday prior to the primary”).

⁶ See *id.* § 2913(b) (providing that “[n]o nomination paper shall be circulated prior to the tenth Wednesday prior to the primary, and no signature shall be counted unless it bears a date affixed not earlier than the tenth Wednesday prior to the primary nor later than the second Friday subsequent to the primary”).

equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative” *Id.* § 2c. Moreover, to risk defaulting to at-large elections now would raise significant equal protection and Voting Rights Act concerns given the dilutive effect that exclusively statewide congressional elections would have upon minority voters, particularly in Philadelphia County.

Given these weighty concerns and the tight time frame that will result from leaving the case with the Commonwealth Court to adjudicate in the meanwhile, our immediate intervention is warranted. To that end, I would take jurisdiction now and appoint a special master to consolidate this matter and its companion case, to resolve the numerous pending intervention petitions, to solicit proposed maps along with the requisite constitutional and technical analyses, and to make a recommendation to this Court as to which map should be adopted, which we may then consider *de novo* with or without additional changes. Otherwise, delays arising from the typical trial and appellate process may drag out our ultimate resolution of this case until mid-March or even April. This expedited approach is not without precedent; in *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), the political branches failed to timely promulgate a congressional map using data from the 1990 census, following which the Commonwealth lost two congressional seats. On that occasion, this Court stepped in to ensure that federal law was complied with and that Pennsylvanians’ due representation was assured by an orderly election. Because time is of the essence, I see no good reason not to follow that example today.

For these reasons, I respectfully dissent.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter, Monica Parrilla, : **CASES CONSOLIDATED**
Rebecca Poyourow, William Tung, :
Roseanne Milazzo, Burt Siegel, :
Susan Cassanelli, Lee Cassanelli, :
Lynn Wachman, Michael Guttman, :
Maya Fonkeu, Brady Hill, Mary Ellen :
Balchunis, Tom DeWall, :
Stephanie McNulty and Janet Temin, :
Petitioners :

v. : No. 464 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania Bureau :
of Election Services and Notaries, :
Respondents :

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

v. : No. 465 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania Bureau :
of Election Services and Notaries, :
Respondents :

ORDER

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

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

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

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

3. All Parties shall submit for the Court's consideration at least one (1) but no more than two (2) proposed 17-district congressional redistricting plan(s) that are consistent with the results of the 2020 Census and, if the party chooses to

do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on **Monday, January 24, 2022.**

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

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

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

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

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

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

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE SUPREME COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROW; WILLIAM TUNG; ROSEANNE
MILAZZO; BURT SIEGEL; SUSAN CASSANELLI; LEE
CASSANELLI; LYNN WACHMAN; MICHAEL
GUTTMAN; MAYA FONKEU; BRADY HILL; MARY
ELLEN BALCHUNIS; TOM DEWALL; STEPHANIE
MCNULTY; and JANET TEMIN,

Petitioners,

v.

LEIGH M. CHAPMAN, in her official capacity as the Acting
Secretary of the Commonwealth of Pennsylvania; JESSICA
MATHIS, in her official capacity as Director for the
Pennsylvania Bureau of Election Services and Notaries,

Respondents.

No. _____

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

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

INTRODUCTION1

ARGUMENT2

I. This Court has the power to assume extraordinary jurisdiction over the
 Redistricting Litigation.....2

II. This Court should *immediately* assume extraordinary jurisdiction over the
 Redistricting Litigation.....4

CONCLUSION.....7

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bd. of Revision of Taxes v. City of Phila.</i> , 4 A.3d 610 (Pa. 2010).....	2, 7
<i>Branch v. Smith</i> , 538 U.S. 254 (2003).....	7
<i>Carter et. al. v. Degraffenreid et al.</i> , No. 132 MD 2021	5
<i>Carter, et al. v. Chapman, et al.</i> , Case No. 464 MD 2021	1, 7
<i>Carter, et al. v. Degraffenreid, et al.</i> , Case No. 141 MM 2021.....	1
<i>Gressman, et al. v. Chapman, et al.</i> , Case No. 465 MD 2021	1, 8
<i>League of Women Voters of Pa. v. Commonwealth</i> , 181 A.3d 1803.....	3, 7
<i>Mellow v. Mitchell</i> , 607 A.2d 204 (Pa. 1992).....	3, 6
<i>Shayer v. Kirkpatrick</i> , 541 F. Supp. 922 (W.D. Mo.), <i>aff'd</i> , 456 U.S. 966 (1982)	7
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	3
Statutes	
42 Pa. C.S. § 726.....	2
2 U.S.C. § 2.....	7

INTRODUCTION

On December 21, 2021, the *Carter* Petitioners¹ filed an Application for Extraordinary Relief in this Court captioned *Carter, et al. v. Degraffenreid, et al.*, Case No. 141 MM 2021 (“First Application”). In the First Application, the *Carter* Petitioners requested that the Court assume extraordinary jurisdiction over an original jurisdiction action pending in the Commonwealth Court captioned, *Carter, et al. v. Chapman, et al.*, Case No. 464 MD 2021, lead case, consolidated with *Gressman, et al. v. Chapman, et al.*, Case No. 465 MD 2021 (collectively, the “Redistricting Litigation”). On January 10, 2022, this Court denied the *Carter* Petitioners’ Application for Extraordinary Relief without prejudice to their right “to reapply for similar relief in this Court, as future developments may dictate.”

Two recent developments dictate that the Court immediately assume extraordinary jurisdiction over the Redistricting Litigation. *First*, on January 26, 2022, Governor Tom Wolf vetoed the congressional districting map passed by the Pennsylvania General Assembly. The political branches have now irreversibly failed to deliver a final plan by January 24, 2022—the deadline by which the Department of State has said it would need to receive a legally binding map in order to “properly

¹ The *Carter* Petitioners consist of Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael Guttman, Maya Fonkeu, Brady Hill, Mary Ellen Balchunis, Tom Dewall, Stephanie McNulty, and Janet Temin.

implement” the next election cycle, reduce “errors,” and provide “timely notice to candidates.” *Second*, the Commonwealth Court in the Redistricting Litigation has now resolved all predicate issues of intervention, and the evidentiary record is complete. But any decision from the Commonwealth Court will certainly be appealed to this Court by one or more of the eight parties.

In these circumstances, this Court should not wait to accept jurisdiction through Chapter 9 of the Rules of Appellate Procedure and the attendant delays. Every moment that has passed since the Legislature missed the January 24 deadline is precious, and there is no reason this Court should let additional time pass. Now that the evidentiary record is closed, this Court should immediately take extraordinary jurisdiction, adopt a map as soon as possible, and provide all Pennsylvanians with the finality they so urgently seek.

ARGUMENT

I. This Court has the power to assume extraordinary jurisdiction over the Redistricting Litigation.

Under 42 Pa. C.S. § 726, “[t]his Court may assume, at its discretion, plenary jurisdiction over a matter of immediate public importance that is pending before another court of this Commonwealth.” *Bd. of Revision of Taxes v. City of Phila.*, 4 A.3d 610, 620 (Pa. 2010). Just as it has done in the past to resolve redistricting deadlocks, this Court should exercise its extraordinary jurisdiction to ensure Pennsylvania has constitutional congressional districts for the 2022 election. This

Court's swift intervention is necessary to protect the constitutional rights of millions of Pennsylvania voters.

The last time Pennsylvania's judiciary was required to remedy an impasse following the decennial census, this Court quickly exercised extraordinary jurisdiction over the case. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992). Similarly, in *League of Women Voters of Pennsylvania v. Commonwealth*, this Court exercised its extraordinary jurisdiction powers to ensure Pennsylvania would have constitutional congressional plans for the 2018 election cycle. *See* 181 A.3d 1083 (Pa. 2018). This time, too, there is no question that the issue is of immediate and crucial public importance—the new reapportionment plan will affect every Pennsylvania voter and every candidate who intends to run to represent the Commonwealth. And Petitioners' rights are clear: continued malapportionment would violate not only the Pennsylvania Constitution, but also the “[U.S.] Constitution’s plain objective of [] equal representation for equal numbers. . . .” *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964).

Indeed, as this Court has previously recognized, “[w]hen the legislature is unable or chooses not to act, it becomes the judiciary’s role to ensure a valid districting scheme.” *League of Women Voters of Pa.*, 181 A.3d at 1086 n.6. That is precisely where we find ourselves today.

II. This Court should *immediately* assume extraordinary jurisdiction over the Redistricting Litigation.

Time remains of the essence in this impasse litigation,² and recent developments only further justify this Court's immediate intervention.

First, since *Carter* Petitioners' First Application, the State's asserted deadline for timely implementation of a map has passed. Respondents, the Acting Secretary and Director for the Pennsylvania Bureau of Election Services and Notaries, stated in prior litigation that a final map must be in place by January 24, 2022 to ensure an efficient election, reduce errors, allow timely notice to candidates, and properly implement new congressional districts:

In order to ensure efficient election administration, allow for timely notice to candidates, and permit proper implementation of the new congressional districts, Respondents believe that that the Department of State must receive a finally and legally binding congressional district map no later than January 24, 2022.

Ex. A, at 9 (emphasis added); *see also* Ex. B ¶ 15 (pp. 8–9) (“[I]n order to help the counties reduce errors . . . the Department of State must receive a final and legally binding congressional district map no later than January 24, 2022.”) (emphasis added).³

² *See* First Application, January 10, 2022 Dissenting Statement (J. Wecht, dissenting) (“[O]ur immediate intervention is warranted.”).

³ Attached hereto as Exhibit A is a copy of Respondents' Brief in Support of Preliminary Objections to Petitioners' Petition for Review, filed September 16, 2021

Second, there is no longer any prospect that the legislative process will timely yield a final map. On January 26, 2022, the Governor of Pennsylvania vetoed House Bill 2146, the proposed reapportionment plan passed by the General Assembly.⁴ It is now certain that adoption of a congressional map will fall to the judiciary.

Third, there is no reason for this Court to wait for the inevitable appeal from the Commonwealth Court's order in the Redistricting Litigation. There are currently eight parties and thirteen maps before the Commonwealth Court, which has indicated it will not issue a final order until next week.⁵ Even with the capable and diligent efforts of the Commonwealth Court, this Court, and the numerous counsel in the Redistricting Litigation, the drafting, filing, and resolution of the parties' jurisdictional statements, consolidation motions, and merits briefs will needlessly delay this Court's consideration of the critical question affecting citizens all across

in *Carter et. al. v. Degraffenreid et al.*, No. 132 MD 2021. Attached hereto as Exhibit B is a copy of Respondents' Preliminary Objections to Petitioners' Petition for Review, filed July 1, 2021 in that same action.

⁴ A copy of the Governor's veto message can be found at <https://www.governor.pa.gov/wp-content/uploads/2022/01/20220126-HB-2146-Veto-Message.pdf>.

⁵ Attached hereto as Exhibit C is a copy of the Commonwealth Court's January 14, 2022 Order in the Redistricting Litigation, stating at paragraph 12 that "If the General Assembly has not produced a new congressional map by January 30, 2022, the Court shall proceed to issue an opinion based on the hearing and evidence presented by the parties."

this Commonwealth: which map will govern congressional elections in Pennsylvania for the next decade?

Indeed, this Court could not be better equipped to immediately assume jurisdiction. Since January 10, 2022, the Commonwealth Court has adroitly resolved all predicate issues of intervention and orchestrated a complex evidentiary hearing, including submissions of thirteen maps by eight parties and four Amici Curiae, direct and cross examination of six expert witnesses, and supplemental evidence. The hard work of factfinding has been completed, and this Court will have the benefit of that full record.

Importantly, this Court's exercise of jurisdiction prior to a final order from the Commonwealth Court need not alter the Commonwealth Court's evidentiary proceedings and subsequent activities. The Commonwealth Court could simply report its recommendations to this Court in the capacity of a "special master" under the auspices of this Honorable Court. *See Mitchell*, 607 A.2d at 206 (Commonwealth Court judge designated as Master to conduct hearings and "report to" the Supreme Court); First Application, January 10, 2022 Dissenting Statement (J. Wecht, dissenting) (observing that a special master should be appointed to make a recommendation to the Court). Upon receipt of the Commonwealth Court's report, this Court can issue a final map expeditiously without resolving any procedural

mechanics or requiring any further action by the parties.⁶

In short, it is still feasible for this Court to exercise extraordinary jurisdiction and timely resolve the unquestionable need for a new, constitutional congressional map for the Commonwealth.

This Court’s extraordinary jurisdiction power—which recognizes the Court’s “broad authority to craft meaningful remedies”—was made for this unique and historical moment. *See League of Women Voters*, 181 A.3d at 1086 n.6. As this Court has already recognized, “[s]wift resolution” of matters such as these is essential to “promote confidence in the authority and integrity of [this Commonwealth’s] institutions.” *Bd. of Revision*, 4 A.3d at 620.

CONCLUSION

For all the foregoing reasons, the *Carter* Petitioners respectfully request that this Court grant the Emergency Application for Extraordinary Relief, immediately take extraordinary jurisdiction over *Carter et al. v. Chapman et al.*, No 464 MD

⁶Notably, the “backstop” of at-large elections under 2 U.S.C. § 2a(c) does not justify any further delay. Section 2a(c) must not and cannot be invoked “as long as it is feasible” to adopt a constitutional final map. *See Branch v. Smith*, 538 U.S. 254, 275 (2003); *see also Shayer v. Kirkpatrick*, 541 F. Supp. 922 (W.D. Mo.), *aff’d*, 456 U.S. 966 (1982) (observing “distaste” for at-large elections; “the only appropriate remedy” for a legislature’s failure to adopt a plan is court-ordered apportionment); First Application, January 10, 2022 Dissenting Statement (J. Wecht, dissenting) (observing risks of defaulting to at-large elections including dilutive effect upon minority voters).

2021, lead case, consolidated with *Gressman et al. v. Chapman et al.*, No. 465 MD 2021, and expeditiously implement proceedings to finally resolve both actions.

Dated: January 29, 2021

Abha Khanna*
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
T: (206) 656-0177

Lalitha D. Madduri*
Christina A. Ford*
Jyoti Jasrasaria*
Joseph N. Posimato*
Raisa M. Cramer*
Elias Law Group LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
lmadduri@elias.law
cford@elias.law
jjasrasaria@elias.law
jposimato@elias.law
rcramer@elias.law
T: (202) 968-4490

Matthew Gordon*
Perkins Coie LLP
1201 Third Avenue Suite 4900
Seattle, WA 98101
MGordon@perkinscoie.com
T: (206) 359-3552

Respectfully submitted,

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Clayton Keir, No. 330486
Alexa Levy, No. 327973
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
KeirC@ballardspahr.com
LevyA@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

**pro hac vice forthcoming*

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

*HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER*
Michele D. Hangley (I.D. No. 82779)
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103-6933
(215) 568-6200

OFFICE OF ATTORNEY GENERAL
Karen M. Romano (I.D. No. 88848)
Keli M. Neary (I.D. No. 205178)
Caleb Enerson (I.D. No. 313832)
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-2717

*PENNSYLVANIA GOVERNOR'S
OFFICE OF GENERAL COUNSEL*
Kenneth L. Joel (I.D. No. 72370)
333 Market Street, 17th Floor
Harrisburg, PA 17101
(717) 787-9348

*PENNSYLVANIA DEPARTMENT OF
STATE*
Kathleen M. Kotula (I.D. No. 318947)
306 North Office Bldg., 401 North Street
Harrisburg, PA 17120-0500
(717) 783-1657

TUCKER LAW GROUP, LLC
Joe H. Tucker, Jr. (I.D. No. 56617)
Dimitrios Mavroudis (I.D. No. 93773)
Jessica A. Rickabaugh (I.D. No. 200189)
1801 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 875-0609

Counsel for Respondents

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

v.

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

No. 132 MD 2021

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

TABLE OF CONTENTS

I. INTRODUCTION1

II. STATEMENT OF JURISDICTION2

III. STATEMENT OF THE CASE.....2

IV. STATEMENT OF THE QUESTIONS INVOLVED.....6

V. ARGUMENT6

VI. CONCLUSION.....10

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Arrington v. Elections Board</i> , 173 F. Supp. 2d 856 (E.D. Wisc. 2001).....	9
<i>Bayada Nurses, Inc. v. Department of Labor and Industry</i> , 8 A.3d 866 (Pa. 2010).....	6
<i>Garcia v. 2011 Legislative Reapportionment Commission</i> , 559 Fed. Appx. 128 (3d Cir. 2014).....	10
<i>League of Women Voters v. Commonwealth</i> , 178 A.3d 737 (Pa. 2018).....	5
<i>Markham v. Wolf</i> , 136 A.3d 134 (Pa. 2016).....	6
<i>Philips Brothers Electrical Contractors, Inc. v. Pennsylvania Turnpike Commission</i> , 960 A.2d 941 (Pa. Commw. Ct. 2008).....	7
<i>Pittsburgh Palisades Park, LLC v. Commonwealth</i> , 888 A.2d 655 (Pa. 2005).....	6, 8
<i>Robinson Township, Washington County v. Commonwealth</i> , 83 A.3d 901 (Pa. 2013).....	7
<i>Sachs v. Simon</i> , No. A21-0546 (Minn. Spec. Redistricting Panel Sept. 13, 2021), available at https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/A21-0243%202021%20Redistricting/A21-0243_Order-Briefing-Scheduling_9-13-2021.pdf	8
<i>Wattson v. Simon</i> , Nos. A21-0243 (Minn. Spec. Redistricting Panel Sept. 13, 2021), available at https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/A21-0243%202021%20Redistricting/A21-0243_Order-Briefing-Scheduling_9-13-2021.pdf	8, 9

Statutes

42 Pa. C.S. § 761(a)(1).....2

Act of Mar. 27, 2020 (P.L. 41, No. 12), 2020 Pa. Legis. Serv. Act
2020-12 (S.B. 422) (West).....5

Act of Oct. 31, 2019 (P.L. 552, No. 77), 2019 Pa. Legis. Serv. Act.
2019-77 (S.B. 421) (West).....4

Minn. Stat. Ann. § 204B.14(1a).....9

Other Authorities

Pa Congressional Redistricting PA House Republican Caucus, *Pa. Redistricting*, <http://www.paredistricting.com> (last visited on Sept. 16, 2021)6

United States Census Bureau, *2020 Redistricting Data Datasets* (Aug. 12, 2021), <https://www.census.gov/programs-surveys/decennial-census/data/datasets/rdo.html> (last visited on Sept. 16, 2021)6

Governor Tom Wolf, *Give Feedback on Pennsylvania Redistricting*, <https://www.governor.pa.gov/redistricting-feedback/> (last visited on Sept. 16, 2021).....6

Commonwealth of Pennsylvania Governor’s Office, *Executive Order* (Sept. 13, 2021), <https://www.governor.pa.gov/wp-content/uploads/2021/09/20210913-EO-2021-05-Redistricting-Advisory-Council.pdf> (last visited on Sept. 16, 2021).....6

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

I. INTRODUCTION

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

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

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

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

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

II. STATEMENT OF JURISDICTION

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

III. STATEMENT OF THE CASE

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

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

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

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

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

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

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

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

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

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

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

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

IV. STATEMENT OF THE QUESTIONS INVOLVED

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

Suggested Answer: Yes.

V. ARGUMENT

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

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

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

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

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

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

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

Redistricting Panel Sept. 13, 2021), *available at*

https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/A21-0243%202021%20Redistricting/A21-0243_Order-Briefing-Scheduling_9-13-2021.pdf (stating that “the panel wishes to gather information about Minnesota

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

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

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

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

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

VI. CONCLUSION

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

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: September 16, 2021

By: /s/ Michele D. Hangle

Michele D. Hangle (ID No. 82779)
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)

One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300

OFFICE OF ATTORNEY GENERAL

Karen M. Romano (I.D. No. 88848)
Keli M. Neary (I.D. No. 205178)
Caleb Enerson (I.D. No. 313832)
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-2717

PENNSYLVANIA GOVERNOR'S OFFICE
OF GENERAL COUNSEL

Kenneth L. Joel (I.D. No. 72370)
333 Market Street, 17th Floor
Harrisburg, PA 17101
(717) 787-9348

PENNSYLVANIA DEPARTMENT OF
STATE

Kathleen M. Kotula (I.D. No. 318947)
Kimberly A. Adams (I.D. No. 205848)
306 North Office Bldg., 401 North Street
Harrisburg, PA 17120-0500
(717) 783-1657

TUCKER LAW GROUP, LLC

Joe H. Tucker, Jr. (I.D. No. 56617)
Dimitrios Mavroudis (I.D. No. 93773)
Jessica A. Rickabaugh (I.D. No. 200189)
1801 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 875-0609

Counsel for Respondents

Petitioners: You are hereby notified to file a written response to the enclosed Preliminary Objections within thirty (30) days from service hereof, or a judgment may be entered against you.

/s/ Michele D. Hangley
Michele D. Hangley
Attorney for Respondents

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
Michele D. Hangley (I.D. No. 82779)
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103-6933
(215) 568-6200

OFFICE OF ATTORNEY GENERAL
Karen M. Romano (I.D. No. 88848)
Keli M. Neary (I.D. No. 205178)
Caleb Enerson (I.D. No. 313832)
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-2717

PENNSYLVANIA GOVERNOR'S
OFFICE OF GENERAL COUNSEL
Kenneth L. Joel (I.D. No. 72370)
333 Market St., 17th Floor
Harrisburg, PA 17101
(717) 787-9348

PENNSYLVANIA GOVERNOR'S
OFFICE OF GENERAL COUNSEL
Kenneth L. Joel (I.D. No. 72370)
333 Market St., 17th Floor
Harrisburg, PA 17101
(717) 787-9348

TUCKER LAW GROUP
Joe H. Tucker, Jr. (I.D. No. 56617)
Dimitrios Mavroudis (I.D. No. 93773)
Jessica Rickabaugh (I.D. No. 200189)
1801 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 875-0609

Counsel for Respondents

EXHIBIT B

RETRIEVED FROM DEMOCRACYPOCKET.COM

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

v.

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

No. 132 MD 2021

**RESPONDENTS' PRELIMINARY OBJECTIONS TO PETITIONERS'
PETITION FOR REVIEW**

RETRIEVED FROM DEMOCRACYDOCKET.COM

Respondent Veronica Degraffenreid, in her official capacity as Acting Secretary of the Commonwealth, and Respondent Jessica Mathis, in her official capacity as Director of the Bureau of Election Services and Notaries of the Pennsylvania Department of State (collectively, “Respondents”), hereby present Preliminary Objections to the Petition for Review (“Pet.”), a copy of which is attached as Exhibit A.

I. PRELIMINARY STATEMENT

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

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

Before this Court can intercede, Pennsylvania law requires more than a chance that Petitioners' rights may be endangered some time down the road. Under bedrock principles of standing, the harm to Petitioners cannot be wholly contingent on future events. And for Petitioners' claims to be ripe, the facts must be sufficiently developed to permit judicial resolution. Here, Petitioners' claims fail on both fronts.

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

1. The Acting Secretary of the Commonwealth is tasked with the important duty of leading the Department of State's work to protect the integrity and security of the electoral process in Pennsylvania. In this role, she coordinates with a wide range of stakeholders—including government officials from the local to the federal level, the public, public interest groups, and election technology experts—to ensure that Pennsylvania's elections are free, fair, secure, and accessible to all eligible voters.

2. The Director of the Bureau of Election Services and Notaries of the Pennsylvania Department of State supervises the Commonwealth's Election

Services and Voter Registration divisions. The Bureau is responsible for planning, developing and coordinating the statewide implementation of the Election Code, voter registration process, and notaries public law.

3. Petitioners—16 individuals living in 11 different Pennsylvania congressional districts—filed their Petition for Review addressed to the Court’s original jurisdiction on April 26, 2021.

4. Petitioners allege that their voting rights will be potentially burdened by a chain of events that was set in motion by the completion of the 2020 decennial census. According to Petitioners, once the United States Secretary of Commerce delivered the apportionment data obtained by the 2020 Census to the President, use of the existing congressional districts of each state—including those of Pennsylvania—became unconstitutional. *See, e.g.*, Pet. ¶¶ 2-4.

5. Petitioners acknowledge, however, that the Secretary of Commerce will not “deliver to Pennsylvania its redistricting data file in a legacy format, which the Commonwealth may use to tabulate the new population of each political subdivision,” until August 2021. *Id.* ¶ 23. Further, the Secretary of Commerce will not “deliver to Pennsylvania that same detailed population data showing the new population of each political subdivision in a tabulated format” until approximately September 30, 2021. *Id.*

6. The earliest deadline that Petitioners allege will be affected by the newly drawn districts, namely, the date on which candidates may begin circulating “nomination papers for candidates seeking to appear on the ballot for the 2022 partisan primary election,” is not until February 15, 2022. Petitioners allege that the deadline to file those petitions is a “few weeks later.” Pet. ¶ 31.

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

8. Petitioners hypothesize, however, that redistricting is unlikely to proceed along ordinary legislative lines in 2021 and 2022, because Pennsylvania’s “political branches are highly likely to be at an impasse this cycle and to fail to enact a new congressional district plan.” *Id.* ¶ 33. The support Petitioners offer for this proposition is that Pennsylvania’s legislative and executive branches are controlled by different parties; that “[i]n just the last two years, Governor Wolf and the Republican-controlled General Assembly have repeatedly conflicted over a

broad range of policies”; and that Census delays have compressed the legislature’s time to enact a new congressional district plan. *Id.*

9. Petitioners do not, however, contend that it will be impossible for the legislative and executive branches to agree on a congressional district map.

10. While the Governor has exercised his veto power at times in the past two years, legislation has also passed during that time with bipartisan support and without a veto—including important voting-related legislation. For example, less than two years ago, the General Assembly enacted and the Governor signed Act 77 of 2019,¹ which allowed all eligible voters to vote by mail-in ballot and made many other important changes to Pennsylvania’s Election Code. Just over a year ago, the General Assembly enacted and the Governor signed Act 12 of 2020,² which made further changes to the Election Code and included sweeping temporary measures to respond to the COVID-19 pandemic. Both of these important voting laws received bipartisan support in the General Assembly.

11. Petitioners also concede, as they must, that “there is still time for the General Assembly and the Governor to enact a new congressional plan[.]” *Id.* ¶ 9.

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

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

12. In March 2021, the U.S. Census Bureau reconfirmed that it expects to provide a legacy format summary redistricting file to each state by mid-to-late August 2021; that states could tabulate this data if they had the capacity to do so, or use outside vendors; and that the Census Bureau would provide tabulated data in a user-friendly system by September 30, 2021.³

13. The first day for candidates to circulate and file nomination petitions for the 2022 primary election is February 15, 2022. By that date, candidates and voters must know the exact boundary lines for congressional districts, so that they can determine which voters are eligible to sign petitions for a particular district.

14. In order to facilitate the signature gathering process, county boards of elections must assign voters to their correct congressional districts in the Statewide Uniform Registry of Electors (“SURE”). This task is time-intensive and requires a great deal of accuracy; historically, it has taken county boards of elections at least three weeks.

15. Accordingly, in order to help the counties reduce errors, allow for timely notice to candidates, and permit proper implementation of the new congressional districts, Respondents believe that the Department of State must

³ <https://www.census.gov/newsroom/press-releases/2021/statement-legacy-format-redistricting.html>

receive a final and legally binding congressional district map no later than January 24, 2022.

16. Based on historical experience, Respondents believe that it is possible, if not likely, that any newly enacted congressional district map will be challenged in court. Accordingly, any timeline must factor in sufficient time for litigation before the Department receives the final map.

17. In the past, the Pennsylvania courts have provided expedited review of time sensitive election-related matters. Upon information and belief, if a new congressional district map is signed into law by the end of December 2021, and if the courts provide expedited review of any challenges to that map, the map is likely to be final and binding by the January 24, 2022 date discussed above. *See supra* ¶ 15.

18. A map signed into law in late December would not be unprecedented. The congressional district map that followed the 2010 Census, for example, was not signed into law until December 22, 2011. *League of Women Voters*, 178 A.3d at 743-44.

19. Upon information and belief, the General Assembly will be able to commence the map-drawing process as soon as the tabulated data is available from a vendor or the Census Bureau. In drawing its proposed map, it will have the

benefit of the guidelines the Pennsylvania Supreme Court set forth in *League of Women Voters*.⁴

20. Upon information and belief, the General Assembly should have sufficient time to prepare proposed maps, seek public feedback on them, and negotiate a resolution that garners bipartisan support, should its leaders choose to do so.

21. For example, if the General Assembly acts promptly after receipt of the legacy format files, it could publish tentative proposed maps by late September 2021, move a bill through the legislative process in October and November 2021, and present a map to the Governor's office by the middle of December 2021.

22. Without a new congressional district plan, Petitioners allege, they “will be forced to cast unequal votes[,...][b]ecause the current congressional plan is unconstitutionally malapportioned[.]” Pet. ¶ 4. Additionally, Petitioners allege that if they are forced to participate in upcoming elections that use the old map,

⁴ As the Supreme Court explained, the constitutionality of a redistricting plan is assessed against the following “neutral benchmarks”: “whether the congressional districts created under a redistricting plan are: composed of compact and contiguous territory; as nearly equal in population as practicable; and ... do not divide any county, city, incorporated town, borough, township or ward, except where necessary to ensure equality of population.” *League of Women Voters*, 178 A.3d at 816-17. “When ... it is demonstrated that, in the creation of congressional districts, these neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional redistricting plan violates Article I, Section 5 of the Pennsylvania Constitution.” *Id.* at 817.

their “right to associate with other voters in support of their preferred candidates will be infringed.” *Id.*

23. As a result, Petitioners ask that the Court “assume jurisdiction now and establish a schedule that will enable the Court to adopt its own plan in the near-certain event that the political branches fail to timely do so.” *Id.* ¶ 9.

24. In the event their predictions of intractability come true and the Court does not intervene, Petitioners allege they will suffer violations of their rights under the Pennsylvania and United States Constitutions, as well as violations of federal law. *See id.* ¶¶ 34-53.

III. PRELIMINARY OBJECTIONS

A. Petitioners Lack Standing and Their Claims Are Not Ripe (Pa. R. Civ. P. 1028(a)(4); Pa. R. Civ. P. 1028(a)(5))

25. Respondents incorporate by reference the preceding paragraphs of these Preliminary Objections.

26. To establish standing to seek relief from this Court, a party must demonstrate that it is “aggrieved,” that is, that it has “a substantial, direct, and immediate interest in the matter.” *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016); *accord Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005).

27. “[A]n interest is ‘immediate’ if the causal connection is not remote or speculative.” *Pittsburgh Palisades Park*, 888 A.2d at 660. (citation omitted).

28. Like standing, the principle of ripeness “mandates the presence of an actual controversy.” *Bayada Nurses, Inc. v. Department of Labor and Industry*, 8 A.3d 866, 874 (Pa. 2010). Unlike standing, however, ripeness “also reflects the separate concern that relevant facts are not sufficiently developed to permit judicial resolution of the dispute.” *Robinson Twp., Washington Cty. v. Com.*, 83 A.3d 901, 917 (Pa. 2013).

29. Here, all of Petitioners’ claims turn on one key fact – whether or not there will be a new congressional district plan in time for the 2022 election. Petitioners allege only that it is “highly likely” that Pennsylvania’s political branches will “be at an impasse this cycle” and “fail to enact a new congressional district plan.” Pet. ¶ 33.

30. That fact, as Petitioners acknowledge, is still unresolved: “there is still time for the General Assembly and the Governor to enact a new congressional plan[.]” Pet. ¶ 9. Because no one knows what will happen in the negotiations between the legislature and the Governor—let alone whether the negotiations will break down, a necessary prerequisite to Petitioners’ claims—the facts underlying the Petition for Review are quintessentially “not sufficiently developed to permit judicial resolution of the dispute.” *Robinson*, 83 A.3d at 917.

31. Simply put, Petitioners do not know whether the Commonwealth’s lawmakers will or will not reach an agreement on redrawn congressional districts.

Petitioners can only *speculate* as to which outcome is more likely. Based on Petitioners' own allegations, their constitutional rights will be infringed, if—and only if—Petitioners' speculation proves correct, and the political branches become intractably deadlocked.

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

33. Further, Petitioners allege that the Secretary of Commerce will not even “deliver to Pennsylvania its redistricting data file in a legacy format, which the Commonwealth may use to tabulate the new population of each political subdivision,” until August of 2021. *Id.* ¶ 23.

34. Petitioners also acknowledge that “Pennsylvania law does not set a deadline by which congressional redistricting plans must be in place prior to the first congressional election following release of the Census.” Pet. ¶ 30.

35. Thus, Petitioners' allegations of harm are speculative and fail to demonstrate the immediacy required to confer standing. *See Pittsburgh Palisades Park*, 888 A.2d at 660.

36. Accordingly, because Petitioners have not satisfied the requirements for standing and because their claims are not ripe, Respondents respectfully request that this Court sustain their Preliminary Objection and dismiss the Petition without prejudice.

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

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: July 1, 2021

By: /s/ Michele D. Hangley

Michele D. Hangley (ID No. 82779)
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300

OFFICE OF ATTORNEY GENERAL

Karen M. Romano (I.D. No. 88848)
Keli M. Neary (I.D. No. 205178)
Caleb Enerson (I.D. No. 313832)
Strawberry Square, 15th Floor
Harrisburg, PA 17120
(717) 787-2717

PENNSYLVANIA GOVERNOR'S OFFICE
OF GENERAL COUNSEL

Kenneth L. Joel (I.D. No. 72370)
333 Market St., 17th Floor
Harrisburg, PA 17101
(717) 787-9348

PENNSYLVANIA DEPARTMENT OF
STATE

Kathleen M. Kotula (I.D. No. 318947)
Kimberly A. Adams (I.D. No. 205848)
306 North Office Bldg., 401 North St.
Harrisburg, PA 17120-0500
(717) 783-1657

TUCKER LAW GROUP

Joe H. Tucker, Jr. (I.D. No. 56617)
Dimitrios Mavroudis (I.D. No. 93773)
Jessica Rickabaugh (I.D. No. 200189)
1801 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 875-0609

Counsel for Respondents

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

Dated: July 1, 2021

/s/ Michele D. Hangle

Michele D. Hangle

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

Marc E. Elias
Aria C. Branch
Lalitha D. Madduri
Christina A. Ford
Jyoti Jasrasaria
Perkins Coie LLP
700 Thirteenth Street NW Suite 800
Washington, D.C. 20005-3960
MElias@perkinscoie.com
ABranch@perkinscoie.com
LMadduri@perkinscoie.com
ChristinaFord@perkinscoie.com
JJasrasaria@perkinscoie.com
T: (202) 654-6200
F: (202) 654-6211

Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

Abha Khanna
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
AKhanna@perkinscoie.com
T: (206) 359-8000
F: (206) 359-9000

Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROW; WILLIAM TUNG; ROSEANNE
MILAZZO; BURT SIEGEL; SUSAN CASSANELLI; LEE
CASSANELLI; LYNN WACHMAN; MICHAEL
GUTTMAN; MAYA FONKEU; BRADY HILL; MARY
ELLEN BALCHUNIS; TOM DEWALL; STEPHANIE
MCNULTY; and JANET TEMIN,

Petitioners,

v.

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

No.

the Pennsylvania Bureau of Election Services and Notaries,
Respondents.

PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

Commonwealth officials in their official capacities.

PARTIES

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

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

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

13. Respondent Veronica Degraffenreid is the Acting Secretary of the

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

II. The 2020 Census is complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A.3d at 1086.

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

CLAIMS FOR RELIEF

COUNT I

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

34. Petitioners reallege and reincorporate by reference all prior paragraphs

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

35. The Pennsylvania Constitution’s Free and Equal Elections Clause provides: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const., Art. I, § 5. This clause “should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people’s power to do so.” *League of Women Voters I*, 178 A.3d at 814.

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

37. The “equality” prong of the Free and Equal Elections Clause requires that voting districts be drawn “by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share.” *Id.* at 809 (quoting *Patterson*, 60 Pa. at 75). Thus, any scheme that “has the effect of impermissibly diluting the potency of an individual’s vote for candidates for elective office relative to that of other voters will violate the guarantee of ‘free and equal’ elections afforded by Article I, Section 5.” *Id.*

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

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

COUNT II

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

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

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

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

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

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

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

COUNT III

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

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

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

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

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

COUNT IV

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

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

50. The Pennsylvania Constitution’s Petition Clause provides: “The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.” Pa. Const., Art. I, § 20. “The Pennsylvania Constitution affords greater protection of

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

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

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

Dated: April 26, 2021

Respectfully submitted,

Marc E. Elias
Aria C. Branch
Lalitha D. Madduri
Christina A. Ford
Jyoti Jasrasaria
Perkins Coie LLP
700 Thirteenth Street NW Suite 800
Washington, D.C. 20005-3960
MElias@perkinscoie.com
ABranch@perkinscoie.com
LMadduri@perkinscoie.com
ChristinaFord@perkinscoie.com
JJasrasaria@perkinscoie.com
T: (202) 654-6200
F: (202) 654-6211

Abha Khanna
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
AKhanna@perkinscoie.com
T: (206) 359-8000
F: (206) 359-9000

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
PrattM@ballardspahr.com
ClarkR@ballardspahr.com
McDonaldM@ballardspahr.com
OrtP@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

CERTIFICATE OF COMPLIANCE

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

Submitted by: Edward D. Rogers

Signature: /s/ Edward D. Rogers

Name: Edward D. Rogers

Attorney No.: 69337

RETRIEVED FROM DEMOCRACYDOCK.COM

VERIFICATION

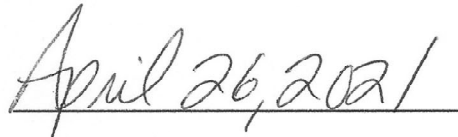
I, Carol Ann Carter, hereby state:

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

Signed:

A handwritten signature in black ink, appearing to read "Carol Ann Carter", written over a horizontal line.

Dated:

A handwritten date "April 26, 2021" written in black ink over a horizontal line.

NOTICE TO PLEAD

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

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

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

Dated: April 26, 2010

/s/ Robert J. Clark
Robert J. Clark, No. 308105
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
Clarkr@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

CERTIFICATE OF SERVICE

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

By Certified Mail:

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

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

Dated: April 26, 2021

/s/ Robert J. Clark
Robert J. Clark, No. 308105
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
Clarkr@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

EXHIBIT C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter, Monica Parrilla, : **CASES CONSOLIDATED**
Rebecca Poyourow, William Tung, :
Roseanne Milazzo, Burt Siegel, :
Susan Cassanelli, Lee Cassanelli, :
Lynn Wachman, Michael Guttman, :
Maya Fonkeu, Brady Hill, Mary Ellen :
Balchunis, Tom DeWall, :
Stephanie McNulty and Janet Temin, :
Petitioners :

v. : No. 464 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania Bureau :
of Election Services and Notaries, :
Respondents :

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

v. : No. 465 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania Bureau :
of Election Services and Notaries, :
Respondents :

ORDER

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

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

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

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

3. All Parties shall submit for the Court's consideration at least one (1) but no more than two (2) proposed 17-district congressional redistricting plan(s) that are consistent with the results of the 2020 Census and, if the party chooses to

do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on **Monday, January 24, 2022**.

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

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

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

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

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

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

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

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

Petitioners

v.

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

Respondents

ORDER

PER CURIAM

AND NOW, this 2nd day of February, 2022, given the impasse between the legislative and executive branches concerning the adoption of congressional districts, and in view of the impact that protracted appeals will have on the election calendar, and time being of the essence, Petitioners' Emergency Application for Extraordinary Relief is **GRANTED**, and Extraordinary Jurisdiction under 42 Pa.C.S. § 726 is **EXERCISED**.

Consistent with the process established in *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), it is hereby **ORDERED**:

1. The consolidated actions docketed in the Commonwealth Court at Nos. 464 M.D. 2021 and 465 M.D. 2021 shall remain consolidated for all purposes in this Court.

2. The Honorable Patricia A. McCullough, a jurist on the Commonwealth Court of Pennsylvania who currently is presiding over the consolidated actions below, is designated to serve as a Special Master.

3. The proceedings occurring in the Commonwealth Court prior to the issuance of this Order, and the filings submitted to that court at its direction in furtherance of those proceedings, shall be considered part of the Special Master's record.

4. The Special Master shall file with this Court on or before February 7, 2022, a report containing proposed findings of fact and conclusions of law supporting her recommendation of a redistricting plan from those submitted to the Special Master, along with a proposed revision to the 2022 election schedule/calendar.

5. On or before February 14, 2022, any Party or *Amicus* Participant previously designated by the court below may file with this Court exceptions to the Special Master's report along with a brief in support thereof. This Court will hold oral argument on these exceptions in Harrisburg, Pennsylvania on February 18, 2022, beginning at 9:30 a.m.

The stay issued by this Court on January 31, 2022, is hereby **LIFTED**. The *Gressman* Petitioners' Request for Clarification is **DISMISSED AS MOOT**.

Chief Justice Baer and Justice Dougherty file concurring statements.

Justice Mundy files a dissenting statement in which Justice Brobson joins.

A True Copy Amy Dreibelbis, Esquire
As Of 02/02/2022

Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

Filed 02/07/2022 Commonwealth Court

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter, Monica Parrilla,
Rebecca Poyourow, William Tung,
Roseanne Milazzo, Burt Siegel,
Susan Cassanelli, Lee Cassanelli,
Lynn Wachman, Michael Guttman,
Maya Fonkeu, Brady Hill, Mary Ellen
Balchunis, Tom DeWall,
Stephanie McNulty and Janet Temin,
Petitioners

CASES CONSOLIDATED

v.

No. 464 M.D. 2021

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 McMahan;
Timothy G. Feeman; and Garth Isaak,
Petitioners

No. 465 M.D. 2021

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

**REPORT CONTAINING PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW SUPPORTING RECOMMENDATION OF
CONGRESSIONAL REDISTRICTING PLAN AND PROPOSED REVISION
TO THE 2022 ELECTION CALENDAR/SCHEDULE**

By Judge Patricia A. McCullough
Commonwealth Court of Pennsylvania

Filed: February 7, 2022

I. INTRODUCTION

II. PROCEDURAL HISTORY

III. THE CONTROLLING CONSTITUTIONAL AND LEGAL PRINCIPLES

- A. Brief History
- B. State Constitutional Principles
 - 1. LWV (Free and Equal Elections Clause)
 - 2. Mellow (one person, one vote; VRA)
- C. Other Considerations
 - 1. VRA
 - 2. Deference to Legislature

**IV. COMMONWEALTH COURT PROCEEDINGS AND
RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

- A. The Plans Presented by the Parties and *Amicus* Participants.
 - 1. Carter Petitioners' Map
 - 2. Gressman Petitioners' Map
 - 3. Governor Wolf's Map
 - 4. Republican Legislative Intervenors' Map (House and Senate)
 - 5. Senate Democratic Caucus Intervenors' Maps
 - a. Costa et al.'s Maps
 - i. Senate Map 1
 - ii. Senate Map 2
 - b. House Democratic Caucus Intervenor McClinton's Map

6. Congressional Intervenors' Maps
 - a. Reschenthaler 1
 - b. Reschenthaler 2
7. Voters of the Commonwealth's Map
8. Draw the Lines PA's Map
9. Khalif Ali et al.'s Map
10. Citizen Voters' Map
- B. Evidentiary Hearing
 1. Procedure
 2. Objections
- C. Expert Reports and Testimony
 1. Johnathan Rodden, Ph.D. (Carter Ps)
 2. Professor Daryl DeFord (Gressman Petitioners)
 3. Dr. Moon Duchin (Gov. Wolf)
 4. Michael Barber, Ph.D. (Cutler & Benninghoff)
 5. Dr. Keith Naughton (Congressional Intervenors)
 6. Dr. Devin Caughey & Michael Lamb (Senate Dem. Caucus Intervenors)
 7. John M. Memmi, Ph.D. (Corman & Ward)
 8. Thomas L. Brunell (Congressional Intervenors)
 9. Sarah Andre (Khalif Ali et al.)
 10. Sean Trende (Voters of the Commonwealth)
 11. Justin Villere (Draw the Lines PA)
- D. Evidentiary Objections
- E. Parties and Amicus Participants' Arguments
 1. Carter Petitioners
 2. Gressman Petitioners
 3. Governor Wolf
 4. Republican Legislative Intervenors (Senate and House Leaders)
 - a. Senate Republican Intervenors (Corman & Ward)
 - b. House Republican Intervenors (Cutler & Benninghoff)
 5. Congressional Intervenors
 6. House Democratic Caucus Intervenor (McClinton)
 7. Senate Democratic Caucus Intervenors (Costa et al.)
 8. Khalif Ali et al.

9. Voters of the Commonwealth
10. Draw the Lines PA
11. Citizen Voters

V. ANALYSIS AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Traditional Neutral Criteria

1. Contiguity
2. Population Equality
3. Comparison of Remaining Maps
4. Political Subdivision Splits
 - a. Carter Plan
 - b. Gressman Plan
 - c. Governor's Plan
 - d. HB 2146
 - e. Senate Democratic Caucus Plan 1
 - f. Senate Democratic Caucus Plan 2
 - g. House Democratic Caucus Plan
 - h. Reschenthaler 1 Plan
 - i. Reschenthaler 2 Plan
 - j. Draw the Lines PA Plan
 - k. Ali Plan
 - l. Citizen Voters Plan
 - m. Voters of PA Plan
 - n. Summary
5. Compactness
6. Splitting of Pittsburgh into Two Congressional Districts
7. Communities of Interest

B. Extra-Constitutional Considerations

1. Partisan Fairness
 - a. Political Geography
 - b. Simulations
 - c. Mean-median scores
 - i. Carter
 - ii. Gressman

- iii. Governor's
 - iv. HB 2146
 - v. Senate Democratic Caucus Plan 1
 - vi. Senate Democratic Caucus Plan 2
 - vii. House Democratic Caucus Plan
 - viii. Resenthaler 1 Plan
 - ix. Resenthaler 2 Plan
 - x. Draw the Lines PA
 - xi. Ali Plan
 - xii. Citizen Voters Plan
 - xiii. Voters of PA Plan
2. Efficiency Gap
- a. Carter Plan
 - b. Gressman Plan
 - c. Governor's Plan
 - d. HB 2146
 - e. Senate Democratic Caucus Plan 1
 - f. Senate Democratic Caucus Plan 2
 - g. House Democratic Caucus Plan
 - h. Resenthaler 1 Plan
 - i. Resenthaler 2 Plan
 - j. Draw the Lines PA Plan
 - k. Ali Plan
 - l. Citizen Voters Plan
 - o. Voters of PA Plan
3. Other Considerations in Evaluating Partisan Fairness
- a. Proportionality Is Not a Requirement or Goal of Redistricting
 - b. Protection of Incumbents
 - c. VRA Concerns
 - d. The Carter Plan's Least Change Approach

VI. RECOMMENDATION

- A. Proposed Findings of Fact, Conclusions of Law, and Adoption of Map Recommendation

- B. Revised 2022 Primary Election Calendar Recommendation
 - 1. Parties' Positions on Revisions to 2022 General Primary Election Calendar
 - 2. Current 2022 General Primary Election Schedule
 - 3. Proposed REVISED 2022 General Primary Election Schedule
- C. Recommendation of 2022 Redistricting Map

PREFATORY STATEMENT

By definition, the act of “judging” entails a comparative evaluation of opposing viewpoints and a determination, based upon the particular role of the court, as to which view prevails in the legal sense. Under Pennsylvania law, there are, in general, unique responsibilities and roles that are bestowed upon a court given the manner in which the court entertains and rules upon a case. For example, there are varying legal duties for a “trial court” who disposes of pre-trial motions and other matters and is the recipient of evidence at a trial, an intermediate appellate court that reviews the trial court’s decision under the applicable standard of review, or a court exercising both roles simultaneously, as in the situations where statutes have vested the power in certain secretaries of administrative agencies or our Supreme Court in exercising its King’s Bench power.

That stated, this case involves some “feats of modern computer technology,” *Mellow v. Mitchell*, 607 A.2d 204, 211 (Pa. 1992), by which parties have attempted to constitutionally reapportion Pennsylvania’s 2020 population in their proposed plans. The Court is astounded by the parties’ fortitude, collegiality, vigorous advocacy, and the overall metrics and characteristics of the maps they provided in pursuing these cases, and it has no doubt that everyone involved is in genuine pursuit of the overarching goals and ideals that promote and uphold the sustainability and functionality of our glorious Constitutional Republic, “a government of the people, by the people, and for the people.”¹ At the end of the day, however, the Court, is faced with the challenging task of recommending one map to indicate the boundary lines for the Congressional seats that represent the great and colonial Commonwealth of Pennsylvania in the United States House of

¹ Abraham Lincoln, The Gettysburg Address (November 19, 1863)

Representatives. Pursuant to Pennsylvania law, the Court must articulate the reasons and rationale for making its credibility and weight determinations and explain how those determinations result in its penultimate conclusion and respectful recommendation to our Supreme Court as to which map is the most suitable and appropriate because it is most aligned with the text and spirit of the Pennsylvania Constitution and the precedent of the High Court of Pennsylvania.

In the report and recommendation that follows, the Court, after detailing the factual and procedure nature of the cases, provides those reasons, rationales, and explanations.

I. INTRODUCTION²

This case involves the redistricting³ of the Commonwealth of Pennsylvania’s (Commonwealth) seats in the United States (U.S.) House of Representatives based on the 2020 Decennial Census (2020 Census). Article I, Section 2 of the U.S. Constitution⁴ dictates that congressional districts be redrawn every 10 years to ensure equal populations between districts. In 2020, the U.S. Census Bureau conducted, for the 24th time in this country’s history, the decennial

² This Court has attempted to convert what was a 188-page trial court opinion, which it intended to file on February 3, 2022, into a Special Master’s Report with findings of fact and conclusions of law to the extent that it was able given the time constraints. Throughout the Report, “FF” denotes a finding of fact and “CL” denotes a conclusion of law. “FFs” and “CLs” are numbered consecutively under each heading, where appropriate. The Stipulations of the Parties, which are part of this Court’s record, are adopted as recommended findings of fact.

³ “Redistricting” is the process of drawing a new map following a reapportionment where a state gains or loses a seat in Congress. Hon. P. Kevin Brobson, *Of Free and Equal Elections and Fair Districts-How the Pennsylvania Supreme Court Slayed (or Hobbled?) the Partisan Gerrymander*, 30 Widener Commonwealth L. Rev. 53, n.11 (2020).

⁴ U.S. Const. art. I, §2 (“Representatives and direct Taxes shall be apportioned among the several States . . . according to their respective Numbers . . .”). The provision of Article I, Section 2 relating to the method of apportionment was amended by the Fourteenth Amendment to the U.S. Constitution. See U.S. Const. amend. XIV, §2.

census for the purpose of, *inter alia*, apportioning⁵ by population the 435 voting members of the U.S. House of Representatives among the several States. On August 12, 2021, the U.S. Secretary of Commerce delivered census-block results of the 2020 Census to the Governor and legislative leaders.⁶ Although the Commonwealth’s population increased from the last decennial census, the 2020 Census shows that the Commonwealth will lose a seat in the U.S. House of Representatives. Thus, starting with the upcoming 2022 Primary Election the Commonwealth will have 17 representatives in the U.S. House of Representatives, 1 fewer than the current 18 representatives it was apportioned following the 2010 Census.⁷ The Commonwealth is therefore required to reapportion its current congressional district plan, *i.e.*, the 2018 Remedial Plan,⁸ which is now malapportioned and effectively obsolete, to account for the loss of a seat in the U.S. House of Representatives. Ordinarily, this task should be completed before the 2022 General Primary Election, which is scheduled to be held on May 17, 2022. Under the current Election Calendar, the first day for candidates to circulate nomination petitions and collect signatures to secure their placement on the ballot is February 15, 2022, and the final day to

⁵ Every 10 years, upon completion of the U.S. census, reapportionment occurs. “Apportionment” or “reapportionment” refers to the process by which seats in the United States House of Representatives are allocated among the several states.

⁶ According to the 2020 U.S. Census, Pennsylvania has a total population of 13,002,700. Thus, the ideal district population for each of the Commonwealth’s 17 reapportioned congressional districts is approximately 764,864 or 764,865 persons.

⁷ Pennsylvania has steadily lost congressional seats through the decades. *See* Brobson, *supra* n.1, at 54-55.

⁸ The current 2018 Remedial Plan’s configuration of Pennsylvania’s congressional districts was drawn by our Supreme Court in 2018 in *League of Women Voters v. Commonwealth*, 181 A.3d 1083 (Pa. 2018) (*LWV III*), using data from the 2010 U.S. Census, after the General Assembly and Governor Wolf failed to reach an agreement for a revised reapportionment plan. Since its adoption, the 2018 Remedial Plan has been used in two previous congressional elections.

circulate and file nomination petitions is March 8, 2022.⁹ Further, those candidates seeking the nomination of political bodies may begin circulating nomination papers on March 9, 2022, and must file their papers by August 1, 2022. Campaigns must collect these signatures from voters in the districts in which they seek elected office, a task that is made impossible without established congressional district lines.

Petitions for Review

Given the Commonwealth's lack of a congressional districting plan due to the 2018 Remedial Plan's malapportionment and in anticipation that the General Assembly and Governor would fail to agree to a new congressional districting plan in time for the 2022 General Primary Election, on December 17, 2021, Petitioners Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael Guttman, Maya Fonkeu, Brady Hill, Mary Ellen Balchunis, Tom DeWall, Stephanie McNulty and Janet Temin (collectively, Carter Petitioners)¹⁰ commenced this action (No. 464 M.D. 2021) by filing a Petition for Review addressed to this Court's

⁹ Candidates therefore have until March 9, 2022, to collect signatures and file and circulate nomination petitions.

¹⁰ Prior to filing this action, on April 26, 2021, the Carter Petitioners filed an action against the Respondents in this Court's original jurisdiction challenging the 2018 Remedial Plan based on the 2020 U.S. Census results. *See Carter v. DeGraffenreid* (Pa. Cmwlth., No. 132 M.D. 2021). By opinion and order dated September 2, 2021, a single judge of this Court permitted various high-ranking legislators of the Pennsylvania General Assembly to intervene in the matter and denied the applications to intervene filed by the Republican Party and Voters of the Commonwealth of Pennsylvania. *See Carter v. DeGraffenreid* (Pa. Cmwlth., No. 132 M.D. 2021, filed Sept. 2, 2021). Thereafter, by opinion and order dated October 8, 2021, a three-judge special election panel of this Court sustained preliminary objections challenging the Carter Petitioners' standing and the ripeness of their claims and dismissed their petition for review without prejudice. *See Carter v. DeGraffenreid* (Pa. Cmwlth., No. 132 M.D. 2021, filed Oct. 8, 2021).

original jurisdiction, challenging the Commonwealth’s 2018 Remedial Plan as unconstitutional based on the 2020 Census. The Carter Petitioners filed their Petition against the Veronica Degraffenreid, in her official capacity as the Acting Secretary of the Commonwealth,¹¹ and Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries (collectively, Respondents).

The Carter Petitioners identify themselves as 16 U.S. citizens who are registered to vote in the Commonwealth in 11 different federal congressional districts.¹² (Carter Pet’rs’ PFR ¶9.) They believe that the congressional districts in which they live are overpopulated relative to other districts in the Commonwealth and that, consequently, “they are deprived of the right to cast an equal vote, as guaranteed to them by the U.S. Constitution and the Pennsylvania Constitution.” (Carter Pet’rs’ PFR ¶10.)

In Count I of their Petition, the Carter Petitioners allege that the 2018 Remedial Plan violates the Free and Equal Elections Clause under article I, section 5 of the Pennsylvania Constitution, Pa. Const. art. I, §5.¹³ Relying largely on the above facts pertaining to the 2020 U.S. Census and Pennsylvania’s reduced congressional delegation, the Carter Petitioners allege that “Pennsylvania’s current congressional district plan places voters into districts with significantly disparate

¹¹ On January 20, 2022, Acting Secretary of the Commonwealth Leigh M. Chapman was substituted as a party for Acting Secretary Veronica Degraffenreid.

¹² Specifically, the Carter Petitioners reside in Bucks, Philadelphia, Montgomery, Delaware, Chester, Northampton, Dauphin, Cumberland, and Lancaster Counties and in congressional districts 1 through 7, 10, and 11. (Carter Pet’rs’ PFR ¶9.)

¹³ The Free and Equal Elections Clause provides: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, §5.

populations, causing voters in underpopulated districts to have more ‘potent’ votes compared to voters, like Petitioners, who live in districts with comparatively larger populations.”¹⁴ (Carter Pet’rs’ PFR ¶53.) They further claim that “[a]ny future use of Pennsylvania’s current congressional district plan would violate Petitioners’ right to an undiluted vote under the Free and Equal Elections Clause.” (Carter Pet’rs’ PFR ¶54.) In Count II of their Petition, the Carter Petitioners allege that the Commonwealth’s current congressional district plan violates Article I, Section 2 of the U.S. Constitution, U.S. Const. art. I, §2.¹⁵ More specifically, they allege that our Supreme Court adopted the 2018 Remedial Plan, which was crafted so that “the population deviation among districts was no more than *one person*”; however, “[n]ow, the population deviation among Pennsylvania’s congressional districts is far higher, on the order of tens of thousands of people.” (Carter Pet’rs’ PFR ¶57.) The Carter Petitioners further contend that given “the significant population shifts that have occurred since the 2010 Census” and the recent 2020 U.S. Census results, the Commonwealth’s congressional districts, which were drawn based on the 2010 Census results, are “now unconstitutionally malapportioned” because they are based on outdated population data. (Carter Pet’rs’ PFR ¶58.) They also claim that any future use of the current congressional district plan would violate their constitutional right to cast an equal, undiluted vote under Article I, Section 2 of the U.S. Constitution. (Carter Pet’rs’ PFR ¶59.) Finally, in Count III of their Petition, the

¹⁴ They claim that districts 8, 9, 12 through 16, and 18 are significantly underpopulated, while districts 1 through 7, 10, 11, and 17 are significantly overpopulated. (Carter Pet’rs’ PFR ¶28.)

¹⁵ Article I, Section 2, Clauses 1 and 3 of the U.S. Constitution provides that the U.S. “House of Representatives shall be . . . chosen . . . by the People of the several States” and “apportioned among the several States . . . according to their respective Numbers.” U.S. Const. art. I, §2, cls. 1 and 3.

Carter Petitioners allege that the Commonwealth’s current congressional district plan containing 18 districts, when the state is now allotted only 17 seats, contravenes section 2c of Title 2 of the U.S. Code, 2 U.S.C. §2c.¹⁶ (Carter Pet’rs’ PFR ¶62.)

As relief, the Carter Petitioners seek, *inter alia*, a judicial declaration that “the current configuration of Pennsylvania’s congressional districts violates article I, section 5 of the Pennsylvania Constitution; [and] Article I, Section 2 of the U.S. Constitution”; “[e]njoin Respondents . . . from implementing, enforcing, or giving any effect to Pennsylvania’s current congressional district plan”; and “[a]dopt a new congressional district plan that complies with article I, section 5 of the Pennsylvania Constitution; Article I, Section 2 of the U.S. Constitution; and 2 U.S.C. §2.” (Carter Pet’rs’ PFR at 18-19, Prayer for Relief.)

Also on December 17, 2021, Petitioners Philip T. Gressman, Ron Y. Donagi, Kristopher R. Tapp, Pamela Gorkin, David P. Marsh, James L. Rosenberger, Amy Myers, Eugene Boman, Gary Gordon, Liz McMahon, Timothy G. Feeman, and Garth Isaak (collectively, Gressman Petitioners) separately commenced an action (No. 465 M.D. 2021) by filing a Petition for Review addressed

¹⁶ Title 2, section 2c of the U.S. Code provides:

In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

2 U.S.C. §2c.

to this Court’s original jurisdiction, similarly claiming that the Commonwealth’s 2018 Remedial Plan is unconstitutionally malapportioned based on the 2020 Census results. Like the Carter Petitioners, the Gressman Petitioners filed their Petition against Respondents. The Gressman Petitioners identify themselves as 12 U.S. citizens and registered voters in the Commonwealth, who are also “leading professors of mathematics and science who reside in congressional districts that were most recently redrawn in 2018, using population data from the 2010 Census.”¹⁷ (Gressman Pet’rs’ PFR ¶10.)

For the most part, the Gressman Petitioners advance averments that duplicate, or at least mimic, those made by the Carter Petitioners. Notably, the Gressman Petitioners add that, “[a]ccording to the 2020 U.S. Census, Pennsylvania has 13,002,700 residents”; “the ideal district population is about 764,864 or 764,865 persons for each of Pennsylvania’s 17 congressional districts”; and “[b]ased on the 2020 Census Data, Pennsylvania’s congressional districts vary in population by as much as 95,000 residents, and none of the current districts has either 764,864 or 764,865 residents.” (Gressman Pet’rs’ PFR ¶27.)

Asserting that they all “reside and intend to vote in a congressional district that the 2020 U.S. Census Data identifies as significantly malapportioned[,]” *id.* ¶28, the Gressman Petitioners argue, in Count I of their Petition, that their “districts, and all other districts in the current plan, vary by as much as tens of thousands of persons relative to one another and to the ideal district population” as a result of “the political branches’ failure to act,” which violates the Free and Equal Elections Clause of the Pennsylvania Constitution. (Gressman Pet’rs’ PFR ¶¶38-

¹⁷ The Gressman Petitioners reside in Delaware, Montgomery, Union, Centre, Philadelphia, Dauphin, Northampton, and in congressional districts 3, 5, 7, 10, and 12. (Gressman Pet’rs’ PFR ¶¶11-22.)¹⁷

39.) In Count II of their Petition, the Gressman Petitioners contend that “[b]ecause the Commonwealth lacks a lawfully apportioned congressional plan, neither potential candidates for office in the 2022 primary and general elections, nor [the Gressman] Petitioners as voters in those elections, know where the boundaries of constitutional congressional districts lie[,]” and that “[p]otential candidates . . . do not know where they will be able to run and cannot identify their constituents.” (Gressman Pet’rs’ PFR ¶¶44-45.) The Gressman Petitioners thus allege that, in turn, they do “not know who will be running in their districts and cannot identify their fellow district residents[,]” thereby depriving the Gressman Petitioners of their “ability to associate with other voters who live in their lawful congressional districts, or to associate with those candidates who will run for office in their districts—again, for no reason other than the political branches’ failure to act[,]” in violation of article I, section 20 of the Pennsylvania Constitution, Pa. Const. art. I, § 20.¹⁸ *Id.* ¶¶45-46. Moreover, they contend that there is no legitimate or compelling state interest that would support burdening their constitutional right to associate. *Id.* ¶47. Finally, in Count III of their Petition, the Gressman Petitioners assert that the variances in population in their districts and other districts result in “the weight of a given Commonwealth citizen’s vote . . . var[ying] significantly based on where that citizen lives.” *Id.* ¶51. Therefore, they contend that current plan’s effective dilution of citizens’ votes based on where they live violates the equal protection guarantees

¹⁸ Pa. Const. art. I, §20 (“The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.”).

afforded them under article I, sections 1 and 26 of the Pennsylvania Constitution, Pa. Const. art. I, §§ 1, 26.¹⁹

As relief, the Gressman Petitioners seek a judicial declaration that Pennsylvania’s current congressional districts are unconstitutional under the above provisions of the Pennsylvania Constitution; and an order enjoining Respondents from “implementing, enforcing, or giving any effect to Pennsylvania’s current congressional district plan in any future election[.]” (Gressman Pet’rs’ PFR at 14, Prayer for Relief.) The Gressman Petitioners also seek “implementation of a new congressional district map with the correct number of congressional districts that adheres to the one-person, one-vote standard and all other applicable constitutional and legal requirements.” (Gressman Pet’rs’ PFR ¶1.)

II. PROCEDURAL HISTORY

By order dated December 20, 2021, this Court consolidated these matters and designated the case at docket number 464 M.D. 2021 as the lead case. By separate order of the same date, this Court directed, in accordance with the process established in *Mellow*, that any applications to intervene shall be filed by December 31, 2021, and that any party to these proceedings could submit to the Court for consideration a proposed 17-district congressional reapportionment plan consistent with the results of the 2020 Census by a certain date. This Court’s order also provided notice that the Court would select a plan from those plans timely filed

¹⁹ Pa. Const. art. I, §1 (“All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”); §26 (“Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.”).

by the parties if the General Assembly and the Governor failed to enact a congressional reapportionment plan by January 30, 2022, with court proceedings to follow should the General Assembly and the Governor fail to act.

Ten applications to intervene were filed by: (i) the Speaker and Majority Leader of the Pennsylvania House of Representatives and the President Pro Tempore and Majority Leader of the Pennsylvania State Senate, (ii) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; (iii) Tom Wolf, Governor of the Commonwealth of Pennsylvania; (iv) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania; (v) Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives; and (vi) Congressman Guy Reschenthaler, Swatara Township Commissioner Jeffrey Varner, and former Congressmen Tom Marino, Ryan Costello, and Bud Shuster; (vii) Voters of the Commonwealth of Pennsylvania; (viii) Citizen-Voters; (ix) Draw the Lines PA; and (x) Khalif Ali et al.

On December 21, 2021, both sets of Petitioners filed applications for extraordinary relief, requesting that the Pennsylvania Supreme Court exercise its extraordinary jurisdiction and/or King's Bench power over these matters under Section 726 of the Judicial Code, 42 Pa.C.S. §726, and Pa.R.A.P. 3309. *See Carter v. Degraffenreid* (Pa., No. 141 MM 2021); *Gressman v. Degraffenreid* (Pa., No. 142 MM 2021).

While those applications were pending in the Supreme Court, on January 6, 2022, this Court held a hearing on the intervention applications, giving every applicant the opportunity to present argument and evidence as to whether they met the standards for intervention under Pennsylvania Rules of Civil Procedure 2327

and 2329, Pa.R.Civ.P. 2327, 2329, and to explain why intervention would not unduly delay and complicate this time-sensitive matter.

By separate orders issued on January 10, 2022, the Supreme Court denied the applications for extraordinary relief and declined to invoke its extraordinary jurisdiction and/or exercise its King's Bench power over these matters, without prejudice to Petitioners to either reapply for similar relief in that Court should future developments so warrant or to apply to this Court and request that the matter be accelerated.²⁰ *See Carter v. Degraffenreid* (Pa., No. 141 MM 2021, order filed Jan. 10, 2022); *Gressman v. Degraffenreid* (Pa., No. 142 MM 2021, order filed Jan. 10, 2022).

On January 14, 2022, this Court entered an order superseding the deadlines set by its original December 20, 2021 order, and granting the applications to intervene filed by: (i) the Speaker and Majority Leader of the Pennsylvania House of Representatives (House Republican Intervenors) and the President Pro Tempore and Majority Leader of the Pennsylvania State Senate (Senate Republican Intervenors) (collectively, Republican Legislative Intervenors), (ii) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams (Democratic Senator Intervenors, *see infra* note 20); (iii) Tom Wolf, Governor of the Commonwealth of Pennsylvania (Governor Wolf); (iv) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania (Senate Democratic Caucus Intervenors);²¹ (v) Representative Joanna E. McClinton, Leader

²⁰ Justice Wecht filed a dissenting statement, in which he expressed his disagreement with the Court's decision not to assume plenary jurisdiction over the matter under the power of extraordinary jurisdiction granted to the Court under 42 Pa.C.S. §726. Justice Donohue also noted her dissent.

²¹ Pursuant to the Notice of Amendment and Joinder from Senate Democratic Caucus Intervenors and Democratic Senator Intervenors, the Applications for Leave to Intervene of: (i)

of the Democratic Caucus of the Pennsylvania House of Representatives (House Democratic Caucus Intervenors); and (vi) Congressman Guy Reschenthaler, Swatara Township Commissioner Jeffrey Varner, and former Congressmen Tom Marino, Ryan Costello, and Bud Shuster (Congressional Intervenors).²² These Intervenors were allowed to participate as Parties in these consolidated matters, and were ordered to submit for the Court’s consideration at least one but no more than two proposed 17-district congressional redistricting plans and a supporting brief and/or a supporting expert report by 5:00 p.m., on January 24, 2022. All Parties were further directed to file a responsive brief and/or a responsive expert report (from the same expert who prepared the January 24 report or any other expert), addressing the other Parties’ January 24 submissions, by 5:00 p.m., on January 26, 2022.

The applications to intervene as parties filed by: (i) Voters of the Commonwealth of Pennsylvania (Voters of the Commonwealth); (ii) Citizen-Voters; (iii) Draw the Lines PA; and (iv) Khalif Ali et al., were denied. However,

Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; and (ii) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania were joined as a single party. They are thus collectively referred to throughout this Report as Senate Democratic Caucus Intervenors.

²² Consistent with this Court’s January 14 and January 24, 2022 orders, the term “Parties,” when used in this Report, refers to Petitioners, Respondents, and Intervenors, except when a particular Party is referenced individually.

Voters of the Commonwealth,²³ Citizen-Voters,²⁴ Draw the Lines PA, and Khalif Ali et al.²⁵ were permitted to participate in these matters as *amicus* participants (*Amicus* Participants), with their participation limited to submissions to the Court in writing. All *Amicus* Participants were permitted to submit for the Court's consideration one proposed 17-district congressional redistricting map/plan and a supporting brief and/or a supporting expert report, by 5:00 p.m., on January 24, 2022.

In this same order, the Court directed the Parties to file a joint stipulation of facts and moved the evidentiary hearing up to January 27, 2022, and January 28, 2022, participation in which was limited to the Parties. Each Party was limited to presenting one witness at the hearing, who would be subject to cross-examination by the other Parties. This Court's order also provided notice that the Court would proceed to issue an opinion based on the hearing and evidence presented by the Parties if the General Assembly failed to produce a new

²³ On January 24, 2022, Voters of the Commonwealth (Haroon Bashir et al.) filed a Notice of Appeal to the Supreme Court from this Court's January 14, 2022 order denying their intervention application. By order dated January 28, 2022, the Supreme affirmed this Court's order on the basis that Voters of Commonwealth waited 10 days to file a notice of appeal from this Court's January 14, 2022 order and at least one of the case deadlines established by that order had already passed. *See Carter/Gressman v. Chapman (Appeal of: Haroon Bashir et al.)* (Pa., Nos. 9 & 10 MAP 2022, orders filed Jan. 28, 2022).

²⁴ On January 26, 2022, Citizen Voters (Leslie Osche et al.) filed a Notice of Appeal to the Supreme Court from this Court's January 14, 2022 order denying their intervention application. By order dated February 2, 2022, the Supreme Court affirmed this Court's order on the basis that Citizen Voters waited 12 days to file a notice of appeal from this Court's January 14, 2022 order and the deadlines established by that order had already passed. *See Carter/Gressman v. Chapman (Appeal of: Leslie Osche et al.)* (Pa., Nos. 11 & 12 MAP 2022, orders filed Feb. 2, 2022).

²⁵ On January 20, 2022, Khalif Ali et al. filed a Notice of Appeal to the Supreme Court from this Court's January 14, 2022 order denying their intervention application. By order dated January 26, 2022, the Supreme affirmed this Court's order. *See Carter/Gressman v. Chapman (Appeal of: Khalif Ali et al.)* (Pa., Nos. 5 & 6 MAP 2022, orders filed Jan. 26, 2022).

congressional redistricting plan by January 30, 2022. As of January 30, 2022, the General Assembly and Governor had not adopted a new reapportionment plan.

On January 29, 2022, the Carter Petitioners filed a renewed Emergency Application for Extraordinary Relief under 42 Pa. C.S. § 726 and Pa.R.A.P. 3309 in the Supreme Court, asking that Court to immediately assume extraordinary jurisdiction over this redistricting litigation. On February 1, 2022, this Court filed a statement, “advising the Supreme Court that the undersigned jurist’s decision and opinion in the above-captioned matters would be ready to be filed in the Commonwealth Court by Thursday, February 3, 2022, and [in no] event later than Friday, February 4, 2022.” (Statement of the Court, dated Feb. 1, 2022.) On February 2, 2022, the Supreme Court issued an order granting the Carter Petitioners’ Application, designating the undersigned as Special Master, and directing that all proceedings in this Court prior to the issuance of the Supreme Court’s order, as well as the filings submitted to this Court at its direction, “shall be considered part of the Special Master’s record.” *See Carter v. Chapman* (Pa., No. 7 MM 2022, order filed Feb. 2, 2022), at 1-2 & ¶¶2-3. The Supreme Court further directed the Court to file with the Supreme Court a report containing proposed findings of fact and conclusions of law supporting its recommendation of a redistricting plan from those submitted to the Court, along with a proposed revision to the 2022 election schedule, by February 7, 2022. *Id.* ¶3.²⁶

²⁶ The Court notes that during the pendency of these matters, this Court was proceeding under the assumption that it had acquired the traditional role of a trial court, the “fact finder” in legalese and, therefore, that its primary responsibility after conducting the bench trial was to render credibility and weight determinations with respect to, and resolve conflicts within, the evidence, being specifically tasked with the obligation of choosing which piece or pieces of that evidence should be accepted, discredited, or otherwise provided with great, little, or no evidentiary value or significance. When this Court assumes such a role, typically and in general, its credibility and

III. THE CONTROLLING CONSTITUTIONAL AND LEGAL PRINCIPLES

It is well established that the primary duty of drawing federal congressional legislative district lines rests with state legislatures, which are vested with the power to determine, *inter alia*, “[t]he Times, Places and Manner of holding Elections for . . . Representatives,” subject to any rules that Congress may establish altering such power. Article I, Section 4 of the U.S. Constitution, U.S. Const. art. I, §4, cl. 1 (Elections Clause).²⁷ Thus, “[w]hile th[e] process is dictated by federal law, it is delegated to the states.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 742-43 (Pa. 2018) (*LWV II*). In Pennsylvania, congressional redistricting is handled as regular legislation, in that any congressional districting plan must pass both chambers of the General Assembly and be presented to the Governor for his approval or veto.²⁸ *LWV II*, 178 A.3d at 742; Pa. Const. art. IV, §15.²⁹ The “initial

weight determinations would have been virtually unassailable on appeal to the Supreme Court, and its rulings and other determinations would have been subjected to an abuse of discretion and/or an error of law standard. *See, e.g., In re R.J.T.*, 9 A.3d 1179, 1190 (Pa. 2010); *Commonwealth v. DeJesus*, 860 A.2d 102, 107 (Pa. 2004). However, considering that our Supreme Court has ably decided to exercise extraordinary jurisdiction pursuant to its King’s Bench power, and has officially appointed the undersigned to serve as a Special Master, this Court now proceeds on the assumption that its credibility and weight determinations and other rulings are not entitled to any form of deference by the Supreme Court, which may substitute its judgment for that of this Court at will. Accordingly, the Court would like to emphasize that its evidentiary and legal determinations are made simply as proposed recommendations to the Supreme Court and that the Court submits them respectfully.

²⁷ The Elections Clause provides: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of ch[oo]sing Senators.” U.S. Const. art. I, §4, cl. 1.

²⁸ “By contrast, the state legislative lines are drawn by a five-member commission pursuant to the Pennsylvania Constitution. *See* Pa. Const. art. II, § 17.” *LWV II*, 178 A.3d at 742, n.11.

²⁹ Article IV, section 15 of the Pennsylvania Constitution provides, in pertinent part, as follows:

and preferred path [regarding the drawing of congressional district maps is, undoubtedly, through] legislative and executive action.” *LWV II*, 178 A.3d at 821. However, where our state legislature is unable or chooses not to timely enact a congressional redistricting scheme, it falls upon the state judiciary to assume “the ‘unwelcome obligation’” and fashion, or in this case choose, an appropriate congressional redistricting plan. *See id.* at 822-23 (stating that “[w]hen . . . the legislature is unable to or chooses not to act, it becomes the judiciary’s role to determine the appropriate redistricting plan”); *see also Mellow*, 607 A.2d at 214 (recognizing that “[c]ongressional redistricting becomes a judicial responsibility only when . . . the state legislature has not acted after having had an adequate opportunity to do so”). Where the Pennsylvania judiciary is unwillingly called upon to assume the decidedly complex task of congressional redistricting due to the General Assembly’s inaction, as in this case, both federal and state constitutional principles are implicated.

A. Brief History

Since the earliest days of the republic, redrawing the boundaries of legislative and congressional districts after each decennial census has been primarily the responsibility of state legislatures. In general, following World War I, and the

Every bill which shall have passed both Houses shall be presented to the Governor; if he approves he shall sign it, but if he shall not approve he shall return it with his objections to the House in which it shall have originated, which House shall enter the objections at large upon their journal, and proceed to re-consider it. If after such re-consideration, two-thirds of all the members elected to that House shall agree to pass the bill, it shall be sent with the objections to the other House by which likewise it shall be re-considered, and if approved by two-thirds of all the members elected to that House it shall be a law

Pa. Const. art. IV, §15.

dramatic shifts in population from rural to urban areas that occurred thereafter, state legislatures failed to fulfill their constitutional responsibility to create redistricting plans. For decades, the U.S. Supreme Court declined repeated invitations to enter the “political thicket” of redistricting and refused to order the legislatures to carry out their duty. *Colegrove v. Green*, 328 U.S. 549, 556 (1946). See *Rucho v. Common Cause*, 139 S. Ct. 2484, 2493-96 (2019).

However, beginning in the 1960s, the U.S. Supreme Court changed course and issued a series of opinions concluding that cases based on malapportionment or a violation of the “one person, one vote” principle³⁰ were justiciable, particularly under the Equal Protection Clause of the Fourteenth Amendment.³¹ See, e.g., *Baker v. Carr*, 369 U.S. 186 (1962); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gaffney v. Cummings*, 412 U.S. 735 (1973); *Karcher v. Daggett*, 462 U.S. 725 (1983); *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016). In the modern jurisprudence, the “one person, one vote” rule may be summarized as follows: “[W]hen drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic compactness,” but “[w]here the maximum population deviation between the largest and smallest district is less than 10%, [] a state or local legislative map presumptively complies with the one-person, one-vote rule”; otherwise,

³⁰ The “one person, one vote” principle is embodied in Article I, Section 2, Clauses 1 and 3 of the U.S. Constitution, which provides that United States “House of Representatives shall be . . . chosen . . . by the People of the several States” and “apportioned among the several States . . . according to their respective Numbers.” U.S. Const. art. I, §2, cls. 1 and 3.

³¹ It provides that: “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, §1.

“[m]aximum deviations above 10% are presumptively impermissible.” *Abbott*, 136 S. Ct. at 1124; *see* Brobson, *supra* n.1, at 56-61.

In the 1960s, the U.S. Supreme Court also began addressing as justiciable challenges to redistricting plans that were configured on the basis of race. Broadly speaking, “[r]acial, race-based, or ethnic gerrymandering occurs where legislative district boundaries are deliberately and arbitrarily distorted for racial purposes. Racial gerrymander challenges, either based on vote dilution (cracking) or vote concentration (packing), are justiciable, with the challenged legislation subject to strict scrutiny under the Equal Protection Clause and/or review for compliance with Section 2 of the Voting Rights Act of 1965 (VRA).^[32]” Brobson, *supra* n.1, at 63-64 (footnotes omitted). *See, e.g.,* *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Wright v. Rockefeller*, 376 U.S. 52 (1964); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995); *Bush v. Vera*, 517 U.S. 952 (1996); *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 270 (2015).

A third subset of claims in the districting/redistricting litigation arena concerns illegal partisan or political gerrymandering in the drawing of boundary lines. In terms of its accepted definition, “[p]artisan gerrymandering . . . is the process of manipulating the drawing of district boundaries to enhance the electoral chances of one political party above and beyond what would be expected based on statewide (or nationwide) partisan distribution of support.” Brobson, *supra* n.1, at 63-65. First addressing the issue in the 1970s, the United States Supreme Court, overall, and through time, has “struggled . . . to find a majority approach to dealing with challenges to legislative districts as ‘extreme’ partisan gerrymanders.” *Id.* at

³² 52 U.S.C. §§10101-10702.

67. See *Gaffney v. Cummings*, 412 U.S. 735 (1973); *Davis v. Bandemer*, 478 U.S. 109 (1986); *Vieth v. Jubelirer*, 541 U.S. 267 (2004); see also *Rucho*, 139 S. Ct. at 2497-99. In 2019, a majority of the U.S. Supreme Court in *Rucho* ultimately concluded that, under the U.S. Constitution, federal courts lack the competency to adjudicate partisan gerrymandering claims because such claims present nonjusticiable political questions. Nonetheless, the *Rucho* Court was careful to state that its “conclusion [did] not condone excessive partisan gerrymandering. Nor [did its] conclusion condemn complaints about districting to echo into a void.” *Rucho*, 139 S. Ct. at 2507. The Supreme Court noted that the States “[were] actively addressing the issue on a number of fronts,” and, as one of a few examples, cited a case from the Supreme Court of the State of Florida, which “struck down that State’s congressional districting plan as a violation of the Fair Districts Amendment to the Florida Constitution.” *Id.*

B. State Constitutional Principles

1. LWV (Free and Equal Elections Clause)

The Pennsylvania Supreme Court recently interpreted and applied the Free and Equal Elections Clause of article I, section 5 of the Pennsylvania Constitution, Pa. Const. art. I, §5, which provides that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage,” in *LWV II*, 178 A.3d 737, a case involving a partisan gerrymandering claim. By way of background, following the 2010 U.S. Census, Pennsylvania’s share of U.S. House members was reduced from 19 to 18 members, thus requiring the Commonwealth to reapportion its congressional district map. Legislation made its way through the legislative process, and the Republican-controlled General Assembly ultimately passed a proposed redistricting plan, which

then-Governor Corbett, also a Republican, signed into law as Act 131 of 2011 (2011 Plan). After having dodged any federal or state challenges for a total of three congressional election cycles, in June 2017, the petitioners, League of Women Voters, and 18 registered Democratic voters (1 from each of our congressional districts at the time), filed suit in this Court’s original jurisdiction against, *inter alia*, current Governor Wolf and the General Assembly, alleging that the 2011 Plan violated numerous provisions of the Pennsylvania Constitution, including the Free and Equal Elections Clause, among others.³³ Specifically, the petitioners claimed that the 2011 Plan constituted an extreme case of partisan gerrymandering that diluted their votes and deprived them of an “equal” election in violation of the Free and Equal Elections Clause.

Subsequently, the petitioners requested that the Supreme Court exercise its extraordinary jurisdiction over the matter. The Supreme Court granted the request and assumed plenary jurisdiction over the matter, but ultimately remanded the case to this Court, directed that the case be assigned to a commissioned judge of this Court, and further directed the Court to conduct, on an expedited basis, discovery, and pretrial/trial proceedings necessary to create an evidentiary record on which the petitioners’ claims could be decided. The Honorable P. Kevin Brobson of this Court³⁴ expeditiously conducted a nonjury trial in December 2017 and issued recommended findings of fact and conclusions of law two days prior to the Supreme Court’s established deadline.

³³ The petitioners also alleged that the 2011 Plan violated their right to free expression and association under article I, sections 7 and 20 of the Pennsylvania Constitution, and their right to equal protection of the law under article I, sections 1 and 26 of the Pennsylvania Constitution. Pa. Const. art. I, §§1, 7, 20, 26.

³⁴ On January 3, 2022, the Honorable P. Kevin Brobson, former President Judge of this Court, was sworn in as Justice of the Pennsylvania Supreme Court.

Following expedited briefing and oral argument and based on Judge Brobson’s findings and conclusions, on January 22, 2018, by *per curiam* order, a majority of the Supreme Court declared as a matter of law that the 2011 Plan “clearly, plainly and palpably” violated the Pennsylvania Constitution, struck the Plan as unconstitutional, and enjoined its further use beginning with the Primary Election scheduled for May 15, 2018. *See League of Women Voters v. Commonwealth*, 175 A.3d 282, 289 (Pa. 2018) (*LWV I*); *see also LWV II*, 178 A.3d at 767-87 (lengthy discussion of the Commonwealth Court proceedings, the Court’s findings of fact based on the evidence presented, and the Court’s conclusions of law). The Court, however, gave the General Assembly additional time to formulate a remedial plan and submit it to Governor Wolf, and advised that the failure to enact a plan would result in the Supreme Court adopting a remedial plan based on the record and proposed plans submitted by the parties. *LWV I*, 175 A.3d at 290.

The Supreme Court thereafter issued an opinion in support of its order on February 7, 2018, in which it relied solely on the Free and Equal Elections Clause, which the Court noted “has no federal counterpart,” in disposing of the petitioners’ claims. *LWV II*, 178 A.3d 737, 803. After exhaustively summarizing the parties’, respondents’, intervenors’, and *amici*’s arguments, *see id.* at 787-801, the Court extensively examined the history of our Constitution, the plain language used in the various iterations of article I, section 5 throughout the years since its adoption, and our state’s jurisprudence interpreting the Free and Equal Elections Clause. *See id.* at 802-13. In doing so and recognizing that the term “free and equal” has historically been interpreted to have “a broad and wide sweep,” the Court interpreted the Free and Equal Elections Clause as prohibiting “any legislative scheme which has the effect of impermissibly diluting the potency of an individual’s vote for candidates

for elective office relative to that of other voters will violate the guarantee of ‘free and equal’ elections afforded by [a]rticle I, [s]ection 5.” *LWV II*, 178 A.3d at 809 (citing *City of Bethlehem v. Marcincin*, 515 A.2d 1320, 1323-24 (Pa. 1986)). Furthermore, as to the consequences of such an interpretation, the Court relevantly noted that “partisan gerrymandering dilutes the votes of those who in prior elections voted for the party not in power to give the party in power a lasting electoral advantage” and that “placing voters preferring one party’s candidate in districts where their votes are wasted on candidates likely to lose (cracking), or [] placing such voters in districts where their votes are cast for candidates destined to win (packing),” results in dilution of the non-favored, or minority, party’s votes. *LWV II*, 178 A.3d at 813-14. In light of the above, the Court determined that the Free and Equal Elections Clause deserves “the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice and bars the dilution of the people’s power to do so.” *Id.* at 814. Accordingly, article I, section 5 of the Pennsylvania Constitution prohibits “the creation of congressional districts which confer on any voter an unequal advantage by giving his or her vote greater weight in the selection of a congressional representative” than other voters. *Id.* at 816.

In terms of how to measure a redistricting plan’s compliance with article I, section 5, the Supreme Court pointed to article II, section 16,³⁵ which

³⁵ Article II, section 16 provides: “The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. 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.

provides certain “neutral benchmarks” that state legislative district maps must meet to prevent the dilution of individuals’ votes, and, noting the absence of any Pennsylvania constitutional provision governing the creation of congressional districts, adopted such “measures as appropriate in determining whether a congressional redistricting plan violates the Free and Equal Elections Clause of the Pennsylvania Constitution.” *LWV II*, 178 A.3d at 816. Accordingly, to pass constitutional muster under article I, section 5, congressional districts must be

composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population.

Id. at 816-17. The Court recognized that other considerations “have historically played a role in the drawing of legislative districts, including “the preservation of prior district lines, protection of incumbents, or the maintenance of the political balance which existed after the prior reapportionment[,]” and that such factors are not necessarily impermissible. *Id.* at 817. According to the Court, however, such factors are “wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts[,]” which criteria “provide a ‘floor’ of protection for an individual against the dilution of his or her vote in the creation of such districts.” *Id.* Moreover, when it is demonstrated that “these neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional

redistricting plan violates [a]rticle I, [s]ection 5 of the Pennsylvania Constitution.”
*Id.*³⁶

Population Equality, Compactness, Contiguousness³⁷
& Political Subdivision Integrity

In applying the above factors to the 2011 Plan, the Court first considered compactness, which can be measured by a number of different mathematical compactness measurements/models. The Court in *LWV II* relied principally on the Reock Compactness Score³⁸ and the Polsby-Popper Compactness³⁹ Score, which seek to quantify compactness by assigning a score of 0

³⁶ By way of contrast, in *Rucho*, voters in two states challenged their states’ congressional districting maps as unconstitutional partisan gerrymandering. The U.S. Supreme Court held that, for purposes of the U.S. Constitution, these claims presented nonjusticiable political questions because “judges have no license to reallocate political power between the two major political parties,” with no constitutional grant of authority to do so and “no legal standards to limit and direct their decisions.” *Id.* at 2506-07. The Court explained that the “central problem” is determining when political gerrymandering “has gone too far,” a measurement too difficult to undertake in an adjudicative context. *Id.* at 2497 (citation omitted). However, U.S. Supreme Court stated that “[p]rovisions in state statutes and **state constitutions** can provide standards and guidance for state courts to apply.” *Id.* at 2507 (emphasis added). In Pennsylvania, that is exactly what our Supreme Court did in *LWV II* when it concluded that partisan gerrymandering claims were cognizable under the Free and Equal Elections Clause and the equal protection guarantee of the Pennsylvania Constitution. *See also supra* pp. 16-17.

³⁷ The *LWV II* Court did not extensively analyze the concept of “contiguity” in its decision; however, in the context of article II, section 16’s requirements that legislative districts be comprised of “contiguous territory,” the Supreme Court has previously defined “a contiguous district [a]s ‘one in which a person can go from any point within the district to any other point (within the district) without leaving the district, or one in which no part of the district is wholly physically separate from any other part.’” *Holt v. 2011 Legislative Reapportionment Commission (Holt I)*, 67 A.3d 1211, 1242 (Pa. 2013).

³⁸ One of the *LWV II* petitioners’ experts, Dr. Chen, defined a Reock Compactness Score as “a ratio of a particular district’s area to the area of the smallest bounding circle that can be drawn to completely contain the district—the higher the score, the more compact the district.” *LWV II*, 178 A.3d at 771.

³⁹ The same expert explained that a “Popper-Polsby Compactness Score is calculated by first measuring each district’s perimeter and comparing it to the area of a hypothetical circle with that same perimeter. The ratio of the particular district’s area to the area of the hypothetical circle

(least compact) to 1 (most compact). The Court noted that the 2011 Plan had Reock and Polsby-Popper Compactness Scores of 0.278 and 0.164, respectively. However, the Court explained that a computer simulation that applied only the traditional redistricting criteria, which had achieved population equality and contiguity, “had a range of Reock Compactness Scores from approximately .31 to .46, which was significantly more compact than the 2011 Plan’s score of .278; and had a range of Popper-Polsby Compactness Scores from approximately .29 to .35, which was significantly more compact than the 2011 Plan’s score of .164.” *LWV II*, 178 A.3d at 818. Additionally, the expert’s simulated plans “generally split between 12-14 counties and 40-58 municipalities, in sharp contrast to the 2011 Plan’s far greater 28 county splits and 68 municipality splits.” *Id.* at 818. Observing “that the 2011 Plan subordinated the goals of compactness and political[]subdivision integrity to other considerations[,]” the Court determined that the Plan “did not primarily consider, much less endeavor to satisfy, the traditional redistricting criteria.” *Id.* at 818-19. In so determining, the Court also relied on its “lay examination of the Plan,” which revealed “tortuously drawn districts that caused unnecessary political-subdivision splits, . . . oddly shaped, sprawling districts which wander seemingly arbitrarily across Pennsylvania,” and counties, political subdivisions, and wards unnecessarily divided amongst multiple congressional districts. *Id.* at 819.

Partisan Breakdown & Partisan Bias
(the mean-median gap and efficiency gap)

Although it was clear that the 2011 Plan failed to meet the traditional redistricting criteria as a statistical matter, which was “sufficient to establish that it

is its Popper-Polsby Compactness Score—the higher the score, the greater the geographic compactness.” *LWV II*, 178 A.3d at 771.

violate[d] the Free and Equal Elections Clause[,]” the Supreme Court nevertheless considered other factors, such as partisan bias, stating that the evidence of record established that the Plan’s “deviation from these traditional requirements was in service of, and effectively work[ed] to, the unfair partisan advantage of Republican candidates in future congressional elections and, conversely, dilute[d the petitioners’] power to vote for congressional representatives who represent their views.” *LWV II*, 178 A.3d at 820. In so stating, the Court relied on expert testimony regarding the partisan breakdown of the 2011 Plan, which was calculated using election data for the 2008 and 2010 statewide elections, as well as the Plan’s partisan bias calculations based on mean-median gap⁴⁰ measurements. *Id.* at 772-73, 820. The Court observed that simulated plans using the traditional redistricting criteria “created a range of up to 10 safe Republican districts with a mean-median vote gap of 0 to 4%,” whereas “the 2011 Plan create[d] 13 safe Republican districts with a mean-median vote gap of 5.9%.” *Id.* at 820. The Court found the petitioners’ expert’s testimony credible “that the 2011 Plan’s outlier status in this regard was [not] attributable to an attempt to account for Pennsylvania’s political geography, to protect incumbent congresspersons, or to establish the 2011 Plan’s majority African-American district[,]” but rather was a means of obtaining unfair partisan gain. *Id.* at 820. The Court also relied on testimony concerning the efficiency gap⁴¹ data in

⁴⁰ According to the petitioners’ expert, the mean-median gap is a “common scientific measurement”; “To calculate the mean, one looks at the average voter share per party in a particular district. To calculate the median, one ‘line[s] up’ the districts from the lowest to the highest vote share; the ‘middle best district’ is the median. . . . The median district is the district that either party has to win in order to win the election.” *LWV II*, 178 A.3d at 774.

⁴¹ The efficiency gap was defined as “a formula that measures the number of ‘wasted votes’ for one party against the number of ‘wasted votes’ for another party.” *LWV II*, 178 A.3d at 777. To find the gap, one “calculates the ratio of a party’s wasted votes over the total number of votes cast in the election, and subtracts one party’s ratio from the other party. The larger the number, the greater the partisan bias.” *Id.*

relation to the Plan, which established “a modest natural advantage, or vote efficiency gap, in favor of Republican congressional candidates relative the Republicans’ statewide vote share[.]” *Id.* at 820. Considering the above, along with other “geographic idiosyncrasies,” the Court concluded “that the 2011 Plan subordinate[d] the traditional redistricting criteria in service of achieving unfair partisan advantage, and, thus, violate[d] the Free and Equal Elections Clause of the Pennsylvania Constitution.” *Id.* at 821. The Court added that “[s]uch a plan, aimed at achieving unfair partisan gain, undermines voters’ ability to exercise their right to vote in free and ‘equal’ elections if the term is to be interpreted in any credible way.” *Id.*

In sum, the *LWV II* decision provides that any congressional redistricting plan must meet the above traditional redistricting criteria to establish compliance with the Free and Equal Elections Clause of the Pennsylvania Constitution. Our Supreme Court again reiterated this principle in its *per curiam* opinion and order in *League of Women Voters v. Commonwealth*, 181 A.3d 1083, 1085, 1087 (Pa. 2018) (*LWV III*), in which it adopted the 2018 Remedial Plan that it prepared based on the submissions of the parties, intervenors, and *amici*, and which it determined met all of the traditional redistricting criteria. All the Parties in the instant matter, as well as all *Amicus* Participants, generally agree that this Court’s consideration of the dozen or more maps submitted is governed, at least initially, by the traditional redistricting criteria espoused in *LWV II* and *III*.

This Court notes, however, that while the *LWV II* case dealt with a challenge under the Free and Equal Elections Clause of article I, section 5 of the Pennsylvania Constitution, Pa. Const. art. I, §5, with which any congressional districting plan must now comply, the challenge in that case was made in the context

of an already-enacted congressional redistricting plan (the 2011 Plan) that had been passed by the state legislature and signed into law by the governor and was predicated on claims that the plan was violative of article I, section 5 **because of partisan political gerrymandering** and the resultant deliberate dilution of individuals' votes. Such is not the case here. The Court again recognizes the Supreme Court's pronouncement in *LWV II* that an essential part of an inquiry into whether a congressional redistricting plan violates the Free and Equal Elections Clause requires an examination of whether the congressional districts created under a redistricting plan meet the "neutral benchmarks" of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts, and that other factors have historically been considered but are, generally, "wholly subordinate to the neutral criteria[.]" *LWV II*, 178 A.3d at 816-17. However, the *LWV II* Court had no occasion to consider other historical factors at length, such as communities of interest, as the constitutionality of the already-enacted map at issue in that case was "resolved solely on the basis of consideration of the degree to which neutral criteria were subordinated **to the pursuit of partisan political advantage[.]**" which was essentially apparent on the face of the 2011 Plan and supported by the evidence in that case, but which is not specifically at issue in the instant case. *Id.* at 817-18 (emphasis added). We also point out the *LWV II* Court's observation that advancements in map drawing technology and analytical software was possible and that such advancements could "potentially allow mapmakers, in the future, to engineer congressional districting maps, which although minimally comporting with these neutral 'floor' criteria, nevertheless operate to unfairly dilute the power of a particular group's vote for a congressional representative[.]" and that the Court

declined to address “the possibility of such future claims.” *Id.* at 817. Thus, although not explicitly stated, it appears the Court left the door open for consideration of other historically subordinate factors where the “neutral criteria” have in fact likely been met in the first instance with the help of map drawing technology and other analytical software, a situation that has now come to fruition in this case of apparent first impression.

In the instant matter, the General Assembly passed House Bill 2146, Printer’s Number 2541 (HB 2146) containing a reapportionment plan based on the 2020 Census results, which was approved by both the House and the Senate in due course. However, because Governor Wolf vetoed HB 2146, as will be discussed *infra*, HB 2146 was not adopted as an act with statewide support. *See* Pa. Const. art. IV, §15 (providing that “[e]very bill which shall have passed both Houses shall be presented to the Governor; if he approves he shall sign it, but if he shall not approve he shall return it with his objections to the House in which it shall have originated . . .”). Moreover, all Parties and *Amicus* Participants in this case agree that the existing 2018 Remedial Plan, drawn by the Supreme Court in 2018, no longer complies with the constitutional requirement of an equal number of citizens in each congressional district, due to the decrease in the number of Pennsylvania’s congressional districts from 18 to 17. Therefore, the Supreme Court is tasked not with considering an already-enacted congressional redistricting plan that is alleged to be the result of partisan political gerrymandering as in *LWV II*, but rather, with (1) declaring unconstitutional the existing and now, based on the 2020 U.S. Census, undisputedly malapportioned 2018 Remedial Plan drawn by our Supreme Court; (2) comparing and evaluating the dozen or more different plans timely submitted by the Parties and *Amicus* Participants; and, in accordance with the Supreme Court’s instruction, (3)

recommending a valid reapportionment plan that this Court believes comports with the federal and state constitutional requirements outlined above. This case is, therefore, more comparable to *Mellow*, 607 A.2d 204, which the Supreme Court mentioned only in passing in its *LWV II* decision. *See LWV II*, 178 A.3d at 822.

2. Mellow (one person, one vote; VRA; other considerations)

In *Mellow*, this Court was confronted with a similar scenario in which the results of 1990 U.S. Census reduced Pennsylvania's share of U.S. House members from 23 to 21 members, a net loss of two seats/districts, thus requiring the Commonwealth to reapportion its congressional district plan. Like in the instant matter, the General Assembly failed to enact a 21-district congressional reapportionment plan, which prompted eight Democratic State Senators to file suit against state election officials in this Court's original jurisdiction, requesting that the Court declare the existing congressional reapportionment law unconstitutional under Article I, Section 2 of the U.S. Constitution; enjoin implementation of the congressional election schedule until a valid plan could be adopted; and adopt a valid reapportionment plan if the General Assembly failed to enact one. This Court held a prompt hearing, after which a judge of this Court preliminarily enjoined implementation of the then-current election schedule on the basis that the existing 23-district apportionment plan was unconstitutional, directed all parties and intervenors to submit their proposed apportionment plans to this Court by a certain date, and advised that the Court would select a plan if one was not enacted.

The General Assembly failed to enact a plan. This Court therefore directed that final hearings be held for the purpose of receiving evidence and considering all timely submitted proposed plans. The Supreme Court assumed

plenary jurisdiction over the matter upon at the request of the plaintiffs, and designated President Judge Craig of this Court as Master to conduct hearings and create an evidentiary record and submit a recommended decision to the Supreme Court. Following three days of hearings before this Court, Judge Craig submitted his findings recommended decision approving one of the plans (Plaintiffs' No. 2) submitted by the eight Democratic State Senator plaintiffs. Ultimately, following the filing of exceptions to the recommended decision and argument thereon, the Supreme Court adopted Judge Craig's findings and recommended decision, along with his revised election calendar, and dismissed all exceptions.

For purposes of identifying a manageable standard by which this Court may judge the dozen or more maps timely submitted by the Parties and *Amicus* Participants in this matter and make a recommendation, Judge Craig's recommended decision, attached to the Supreme Court's decision as Appendix A, will first be discussed and then the Supreme Court's decision adopting Judge Craig's recommendation.

In his recommended decision, Judge Craig compared and evaluated the following six timely submitted reapportionment plans in his recommended decision:

- Plaintiffs' No. 1 and 2;
- O'Donnell A and O'Donnell B (submitted by the Speaker of the Pennsylvania House of Representatives and seven other Democratic House members);
- Murtha-McDade Plan (a bipartisan plan submitted by a United States Congressman and nine other incumbent members of Pennsylvania's congressional delegation); and

- Loeper 1 (submitted by the Pennsylvania State Senate Majority Leader and five other Republican State Senators).

Mellow, 607 A.2d at 206.

Prior to considering the proposed plans, Judge Craig laid out the controlling constitutional principles governing his analysis. Specifically, he discussed the federal constitutional “one person, one vote” principle embodied in Article I, Section 2, of the U.S. Constitution, which provides that U.S. “House of Representatives shall be . . . chosen . . . by the People of the several States” and “apportioned among the several States . . . according to their respective Numbers.” U.S. Const. art. I, §2, cls. 1 and 3. Judge Craig observed that, in applying Article I, Section 2, the U.S. Supreme Court has held “that the goal is to make ‘as nearly as practicable one man’s vote in a congressional election . . . worth as much as another’s[,]’” and that such “requirement is the ‘preeminent if not the sole, criterion’ for appraising the validity of redistricting plans.” *Mellow*, 607 A.2d at 214 (citing *Wesberry v. Sanders*, 376 U.S. 1 (1964), and *Chapman v. Meier*, 420 U.S. 1 (1964)). Judge Craig further recognized that “[t]he United States Supreme Court has declined to adopt any particular deviation figure as the maximum deviation per se allowable[,]” and that “[p]opulation variances among districts must be justified.” *Mellow*, 607 A.2d at 214 (citing *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969)). As Judge Craig noted, “**a plan is not per se unconstitutional just because a smaller deviation could be achieved.**” *Mellow*, 607 A.2d at 214 (emphasis added) (citing *Karcher v. Daggett*, 462 U.S. 725 (1983)).

Judge Craig defined “maximum total deviation” as “the sum of the percentage by which . . . [the] most populous district . . . exceeds the ideal district population . . . and the percentage by which . . . the least populous . . . [is] below this

ideal[.]” and he noted various maximum deviations that had previously been accepted (0.149%, 0.2354%, 0.399%) or rejected (5.97% and 0.284%) in then-recent years. *Mellow*, 607 A.2d at 214-15 (quoting *Board of Estimate v. Morris*, 489 U.S. 688 (1989)). He observed that while the Murtha-McDade Plan achieved “the ultimate of equality with a maximum deviation of 0.0000017%, consisting of a difference of just one person out of 565,793[,] [d]epartures from such mathematical perfection, according to the federal courts, are justified only to advance the cause of equality realistically in the following respects:

- avoiding fragmentation of local government territories and splitting of election precincts;
- effectuating adequate representation of a minority community;
- creating districts which are compact and contiguous;
- maintaining relationships of shared community interests; and
- not unduly departing from the useful familiarity of existing districts[.]

Mellow, 607 A.2d at 215 (citations omitted).

Judge Craig then stated that he must consider all plans “on the same footing,” as we must do here. In doing so, he considered the following items, which the Court quotes in full:

Column 1—Identification of Plan: In addition to the record name for each plan, this column identifies the specific legislative bills, if any, which have substantially embodied the plan in the General Assembly. None of the listed bills was passed by both houses.

Column 2—Maximum Deviation: As defined above, this percentage figure is the sum of the percentage by which the most populous district exceeds the ideal equality number, plus the

percentage by which the least populous district falls below that ideal number.

Column 3—Average Deviation: The mean figure which reflects an average of the percentage deviations for all 21 districts in the respective plan.

Column 4—Split Municipalities: Remembering that the term “municipality” includes counties, as well as cities, boroughs and townships in Pennsylvania, 1 Pa.C.S. § 1991, this column gives a count of the municipalities to which more than one of the proposed districts of the plan applies. This column treats Philadelphia as a county rather than a city.

Column 5—Split Election Precincts: Although a voting unit in Pennsylvania is officially termed an “election district,” 25 P.S. § 2602(g), the table and the record here use, for the same concept, the term “precinct” in order to avoid confusion with the congressional “districts” which are the principal subject matter of this proceeding.

Columns 6, 7—African–American Population of District 1: These columns relate to the potentiality of a second congressional district with an African–American majority population, which would be in addition to Congressional District 2, which all plans recognize as presently being a majority African–American district in Philadelphia. Column 6 gives the African–American population percentage of the respective proposed district, and Column 7 gives the percentage of voting age African–American population in the proposed district.

Column 8—Regional Communities of Interest: This column indicates those plans which recognize the community-of-interest relationships established by the evidence (discussed below) as to (1) Lehigh Valley’s long-standing joinder of Lehigh and Northampton Counties in one congressional district, (2) Berks and Schuylkill Counties’ long-standing joinder in one congressional district, (3) keeping Bucks County in one congressional district, and (4) retention of Carlisle and adjacent municipalities such as North Middleton Township, in Cumberland County, within the 19th Congressional District.

Column 9—Estimates of Party Balance of Seats: Based solely on party registration statistics, this column gives the number of congressional seats thus projected for each party with respect to each plan across the state.

Because the criterion of compactness and contiguity involves visual inspection of a graphic presentation of the shape of a congressional district, that factor cannot be reflected by means of the tabulation in Finding No. 16, but must be considered separately.

Id. at 215-16.

In comparing and contrasting the plans, Judge Craig first considered the mathematical exactitude of the Murtha-McDade Plan in terms of the equal population requirement, with a maximum deviation of 0.0000017%, but rejected it given its split of 22 election precincts and 27 local governments, noting that “a serious election administration problem arises from requiring the voters in a single precinct to look to two different sets of congressional candidates.” *Id.* at 218. He then determined that all of the proposed plans were acceptable in terms of population equality, and that he would have to consider other criteria in evaluating the plans further.

In particular, Judge Craig noted that, “[w]hen possible, an increase in the number of minority-in-the-majority districts is constitutionally required.” *Id.* at 219 (citing *Gingles*, 478 U.S. 30, and other cases). “Minority voting should be maximized as much as possible.” *Mellow*, 607 A.2d at 219 (citing *Jeffers v. Clinton*, 730 F. Supp. 196 (1989)). Given the 9% African-American population of Pennsylvania at the time, Judge Craig noted that there was “a potential for two African-American majority districts.” *Mellow*, 607 A.2d at 219. In so noting, Judge Craig specifically considered Philadelphia, which he observed was, at the time, one of the three Pennsylvania counties large enough to be split into more than one

congressional district, and also the only majority African-American congressional district (District 2), with about 81% African-American population. *Id.* He then considered the “key question” of whether another African-American majority congressional district could be mapped out of the then-adjointing District 1 by including it in the adjoining City of Chester (which was then the only city in Pennsylvania with an African-American majority of citizens), and in some small part of the already-existing super-majority in District 1. *Id.* Determining that it could, the issue in the case became one of what percentage of African-American population was appropriate in each of the districts. *Id.* In placing considerable emphasis on the percentages of African-Americans in each district, Judge Craig considered which of the plans before him created a second African-American minority-majority district (*i.e.*, District 1), while also simultaneously maintaining a substantial majority population of African-Americans in District 2. *Id.* at 219-20. Ultimately, Judge Craig found that Plaintiffs’ Plans Nos. 1 and 2 came closest to achieving as much, with 52.4% African-American population in District 1 and 62.242% in District 2, both above 50%, while all of the other plans kept District 2’s percentage higher at the cost of achieving a lower African-American population in District 1 and thus risking the District 1 minority group’s effectiveness. *Id.* Despite arguments made to the contrary, and given the absence of any supporting evidence, Judge Craig rejected the notion that a particular percentage of a minority was required in a minority-majority district in order to preserve that group’s effectiveness. *Id.* at 220.

“On the basis of deviations from equality minimized as much as possible, with a lessened administrative problem as a result of minimal precinct splitting, and embodiment of a potential for two African-American majority districts,” Judge Craig characterized Plaintiffs’ Plan No. 2 “as the leading prospect

for approval[.]” and advised that the next step in the inquiry must be “salient regional concerns, as voiced in th[e] record[.]” *Id.* at 220. In so doing, Judge Craig observed the following concerns established by the undisputed testimony and other evidence before him: a certain township’s desire that it be kept entirely within its county in a particular congressional district; certain counties have been together within a single district since 1972, and share a valley, circulation arteries, common news media, and organizational and cultural ties, which have a unifying influence on the valley area; two counties share community of interest in a common economic base, circulation arteries, and schools of higher education, among other things; an affinity of two townships in a county with other communities in one district as opposed to another; and the City of Pittsburgh having more commonality with certain suburbs as opposed to others. *Id.* at 220-24. Judge Craig concluded that Plaintiffs’ Plans Nos. 1 and 2 were the only plans that substantially satisfied the regional concerns identified by the evidence.

Having considered the above factors, Judge Craig ultimately recommended Plaintiffs’ Plan No. 2, which had a greater maximum deviation than the mathematically exact Murtha-McDade Plan, because the proponents of the plan showed that the variance between the districts was necessary to achieve the legitimate goals of minimally splitting precincts, achieving an enlarged number of two congressional districts with a majority of African-American population, and implementing the community-of-interest factors in those regions across the state that had identified them. *Id.* at 224.

In its opinion adopting Judge Craig’s recommendation, the Supreme Court observed that Judge Craig properly considered the federal law requiring that congressional districts be equal in population to the greatest practical extent, and that

slight departures from mathematical perfection have been justified by federal courts only to advance the cause of equality in terms of “avoiding fragmentation of local government territories and the splitting of election precincts; effectuating adequate representation of a minority group; creating compact and contiguous districts; maintaining relationships of shared community interests; and not unduly departing from the useful familiarity of existing districts.” *Id.* at 206.

In addressing, and rejecting, a challenge to Judge Craig’s selection of Plaintiffs’ Plan No. 2 based on its higher maximum total deviation than other plans, the Supreme Court observed that the U.S. Constitution requires only that “districts be apportioned to achieve population equality ‘as nearly as is practical.’” *Id.* at 207. The Court identified a two-part test for determining whether the maximum total deviation of a plan satisfies the “one person, one vote” principle: “First, the party challenging a redistricting plan must show that ‘the population differences among districts could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population.’”; However, “‘a plan is not per se unconstitutional just because a smaller population deviation could be achieved.’” *Id.* The Court then observed that “the existence of plans with smaller deviations simply obligates a court to apply the second part of the test, *i.e.*, to ask whether the proponent of the plan can show that ‘each significant variance between districts was necessary to achieve some legitimate goal.’” *Id.* The Court also identified state objectives found to be legitimate, including making districts compact, **respecting municipal boundaries, preserving cores of prior districts**, and avoiding contests between incumbent representatives. *Id.* (citing various cases). Moreover, the Court observed that Judge Craig properly held that extremely small deviations in district populations may be justified by, *inter alia*: **a desire to avoid splitting of political subdivisions** and

precincts, **to provide adequate representation to a minority group, and/or to preserve communities of interest.** *Id.* at 208.

The Supreme Court also agreed with Judge Craig that Plaintiffs' Plan No. 2 best protected minority voting rights. In so doing, it observed that "[t]he primary tool for preventing minority voting dilution is Section 2 of the [VRA, 52 U.S.C. §10301, *formerly* 42 U.S.C. §1973]," which prohibits the state from denying or abridging individuals' right to vote based on race. *Mellow*, 607 A.2d at 208-09. The Court noted that "there is no legal requirement either in the courts of the Commonwealth or the federal courts," that a redistricting plan have a specific percentage of African-American total population to satisfy Section 2, and rejected any arguments to the contrary. *Id.* at 210. Further, citing *Gingles*, the Court noted that many of the plans diluted the voting strength of African-American voters by concentrating those voters into one African-American district at the expense of voters in another African-American district. The Court then noted that while incumbency protection can be considered, "it may not be accomplished at the expense of minority voting potential." *Mellow*, 607 A.2d at 210. Finally, the Court identified two other factors for consideration: political fairness, in terms of achieving a politically fair balance in Pennsylvania's delegation and dividing the loss of two seats evenly; and minimizing municipality and precinct splitting. *Id.* Because Plaintiffs' Plan No. 2 met these requirements, the Court adopted Judge Craig's recommendation.

Turning to the instant matter, the question, as this Court understands it, is what Judge Craig aptly identified in *Mellow* as which of the dozen or so proposed plans timely submitted to this Court for consideration comes closest to meeting all of the pertinent constitutional standards, outlined above, including those

“subordinate” standards identified by *LWV II*, which this Court must now apparently consider given that most plans appear to at least minimally meet the “traditional redistricting criteria” on account of advances in map drawing technology and other analytical software.

C. Other Considerations

A. Voting Rights Act

As noted in *Mellow*, Pennsylvania is subject to section 2 of the VRA, 52 U.S.C. §10301. *See Mellow*, 607 A.2d at 208-10. Subsection 2(a) of the VRA prohibits any state law “which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color” 52 U.S.C. §10301(a). Subsection 2(b) provides that a violation of subsection (a) is established, based upon the totality of the circumstances, if “it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens” referred to in subsection (a), “in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. §10301(b).

As it concerns the redistricting process, the U.S. Supreme Court has recently explained:

A State violates [section] 2 [of the VRA] if its districting plan provides “less opportunity” for racial minorities “to elect representatives of their choice.” *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 425 . . . (2006) (*LULAC*). In a series of cases tracing back to . . . *Gingles*, 478 U.S. 30 . . . , we have interpreted this standard to mean that, under certain circumstance, States must draw “opportunity” districts in which minority

groups form “effective majorit[ies],” *LULAC, supra*, at 426

Abbott v. Perez, 138 S. Ct. 2305, 2315 (2018).

The circumstance in which a state must draw such opportunity districts, the Supreme Court has explained, is established by three findings derived from the Court’s opinion in *Gingles*. The so-called “*Gingles* requirements” are: (1) a racial minority group that is “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) that the racial group is “politically cohesive”; and (3) that “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Gingles*, 478 U.S. at 50-51; *see also LULAC*, 548 U.S. at 425.

2. Deference to Legislature

The plan submitted by the Republican Legislative Intervenors is actually HB 2146. The Republican Legislative Intervenors asked this Court to give their proposed plan special deference because that plan was passed in the General Assembly on January 24, 2022. As such, the Republican Legislative Intervenors correctly note it went through the standard requirements for the making of any map. As stated earlier, it is the legislature who has the responsibility to draw a map. The plan was drawn by a well-known nonpartisan citizen, Amanda Holt, and it was vetted by the public in due course of its consideration before being adopted, with minor changes by the House and Senate. The Bill was then vetoed by the Governor.

Some state and federal courts have declined to accord deference to a map that made it only partway through the legislative process but failed to become law. *See, e.g., O’Sullivan v. Brier*, 540 F. Supp. 1200, 1202 (D. Kan. 1982) (three-judge court) (“[W]e are not required to defer to any plan that has not survived the full legislative process to become law.”); *Carstens v. Lamm*, 543 F. Supp. 68, 79 (D.

Colo. 1982) (three-judge court) (explaining that a vetoed legislative plan “cannot represent current state policy any more than the Governor’s proposal”); *Hippert v. Ritchie*, 813 N.W.2d 379, 380 n.6 (Minn. 2012) (“[B]ecause the Minnesota Legislature’s redistricting plan was never enacted into law, it is not entitled to . . . deference.”); *Wisconsin State AFL-CIO v. Elections Board*, 543 F. Supp. 630, 632 (E.D. Wis. 1982) (three-judge court). Other courts, however, have given deference to plans enacted by the legislature even though they were vetoed by the governor. See *Donnelly v. Meskill*, 345 F. Supp. 962 (D. Conn. 1972) (adopting the legislature’s proposed plan, explaining that “[t]he legislative adoption of [redistricting plan] tips the scales in favor of the plan . . . which provides districts essentially as outlined by the legislature . . .” and observing that the plan had “the added advantage that it is basically the plan adopted by the legislature”). The U.S. Supreme Court has also opined on this issue holding that a federal district court erred by displacing “legitimate state policy judgments with the courts own preference” by neglecting a recently enacted, but not precleared plan by the Department of Justice, legislative redistricting plan. *Perry v. Perez*, 132 S. Ct. 934, 941 (2012). In *Upham v. Seamon*, 456 U.S. 37 (1982) (*per curiam*), the U.S. Supreme Court held that district courts are not free to disregard the political program of state legislatures when fashioning reapportionment plans.

At this juncture, the Court will review HB 2146 along with the other plans submitted to the Court to assess its compliance with the constitutional traditional criterial factors adopted in *LWV II*, as well as other non-constitutional factors.

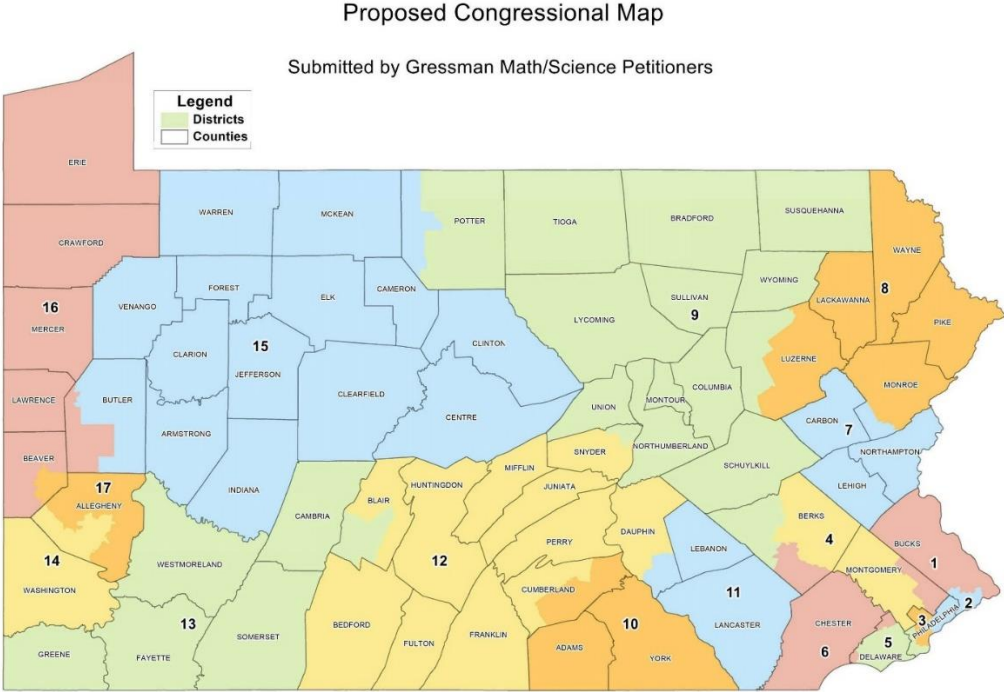
IV. COMMONWEALTH COURT PROCEEDINGS AND RECOMMENDED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

A. The Plans Presented by the Parties and Amicus Participants

FF1. The following plan was submitted by the Carter Petitioners. *See* Carter Petitioners' Brief (Br.) in Support of Proposed Congressional Redistricting Plan, Exhibit (Ex.) 2.

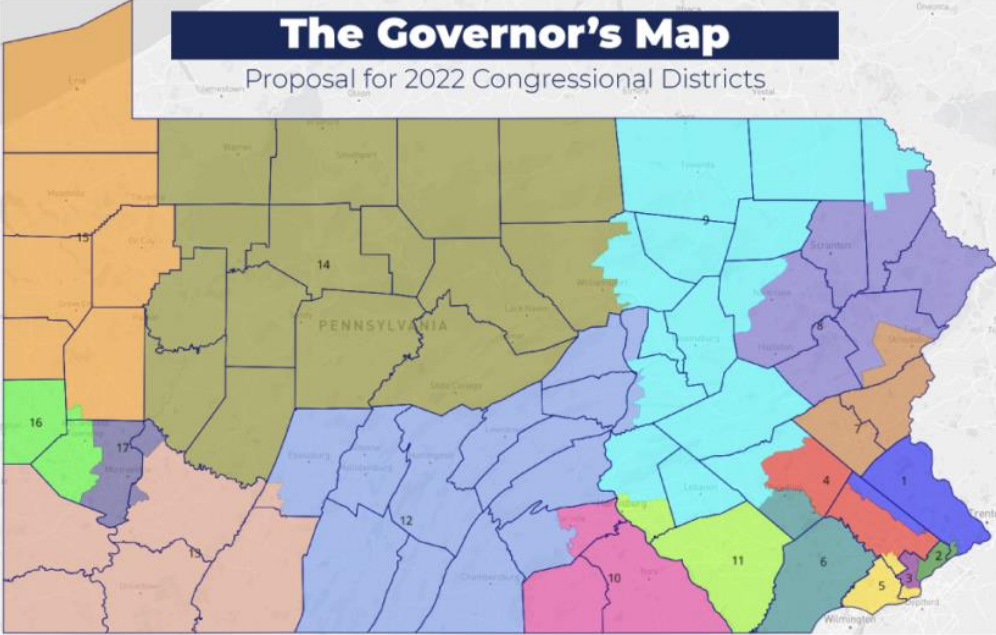


FF2. The following map, self-described as the “Math/Science Map,” was submitted by the Gressman Petitioners. See Br. in Support of *Gressman Math/Science Petitioners’ Congressional Plan*, Ex. 2, at 1.

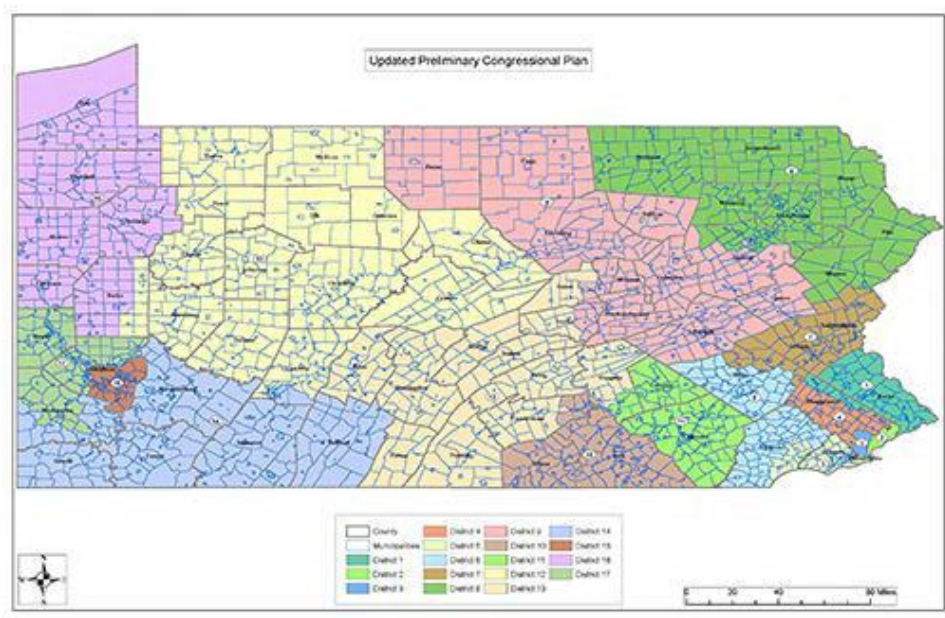


Carter v. Chapman, No. 464 M.D. 2021, and Gressman v. Chapman, No. 465 M.D. 2021.

FF3. The following plan, developed by the Governor’s Office, was submitted by Governor Wolf. See <https://www.governor.pa.gov/congressional-districts-map-proposals>.



FF4. The following plan, which is embodied in HB 2146, was submitted by the Republican Legislative Intervenor (House and Senate). *See* Pre-Hearing Opening Br. of Senate Republican Intervenor, at PDF p. 181, Appendix (App.) C to John M. Memmi, Ph.D. Expert Report (Memmi Report); Corrected Opening Br. of House Republican Intervenor in Support of Proposed Congressional Redistricting Map, Ex. I, Ex. 1.



FF5. On December 8, 2021, House Bill 2146, Printer's Number 2491 was introduced and referred to the House State Government Committee. *See* Bill History.⁴²

FF6. House Bill 2146, Printer's Number 2491 embodied a 17-district congressional redistricting plan that a citizen and good-government advocate, Amanda Holt, had created on her own. Corrected Opening Brief of House

⁴² *See* Bill History for HB 2146, available at https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2021&sind=0&body=H&ty=pe=B&bn=2146 (last visited Feb. 1, 2022).

Republican Intervenors, Ex. A, Grove Letter (Jan. 6, 2022) (Grove Letter); Ex. I, Affidavit of Bill Schaller.

FF7. On December 15, 2021, the Bill was reported out of the House State Government Committee, as amended, as HB 2146, Printer's Number 2541 (HB 2146), and was brought up for first consideration on the same date. *See* Bill History.

FF8. HB 2146 was made available for public comment, engendering a total of 399 comments. *See* Grove Letter.

FF9. Those comments led to some additional changes to the bill that were designed to increase the compactness of certain districts and ensure that certain communities of interest were preserved. *Id.*

FF10. The Bill was brought up for second consideration on January 11, 2022, and, on January 12, 2022, the Pennsylvania House of Representatives passed HB 2146 by a 110-91 vote and referred it to the Senate State Government Committee for consideration. *See* Bill History.

FF11. HB 2146 was reported out of the Senate State Government Committee on January 18, 2022, and was brought up for first consideration on that same date. *See* Bill History.

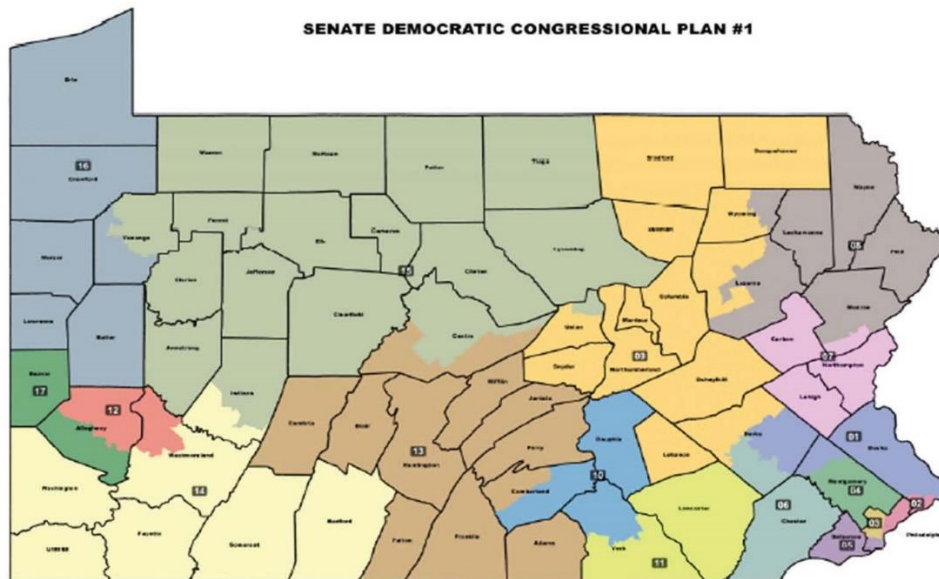
FF12. HB 2146 was brought up for second consideration by the full Senate on January 19, 2022. *Id.*

FF13. On January 24, 2022, HB 2146 was referred to the Senate Appropriations Committee, reported out of the committee, brought up for third consideration, and passed in a 29-20 vote. *Id.*

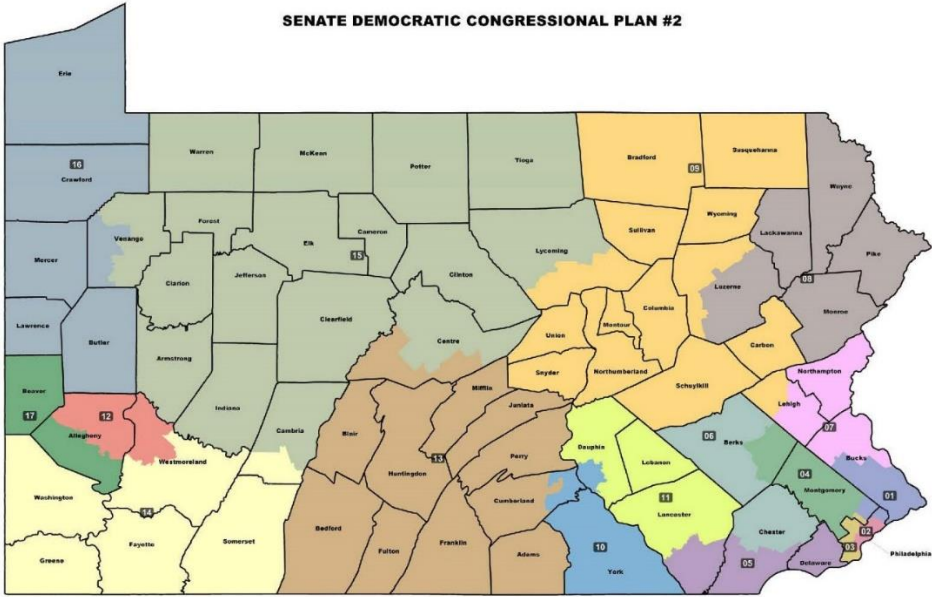
FF14. Also on January 24, 2022, HB 2146 was presented to Governor Wolf, who subsequently vetoed the bill on January 26, 2022. *See* Bill History.

FF15. Two following plans were submitted by the Senate Democratic Caucus Intervenors. *See* Senate Democratic Caucus’ Br. in Support of Senate Democrats’ Caucus’ Proposed Redistricting Plan, Ex. A (Map 1) and (Map 2).

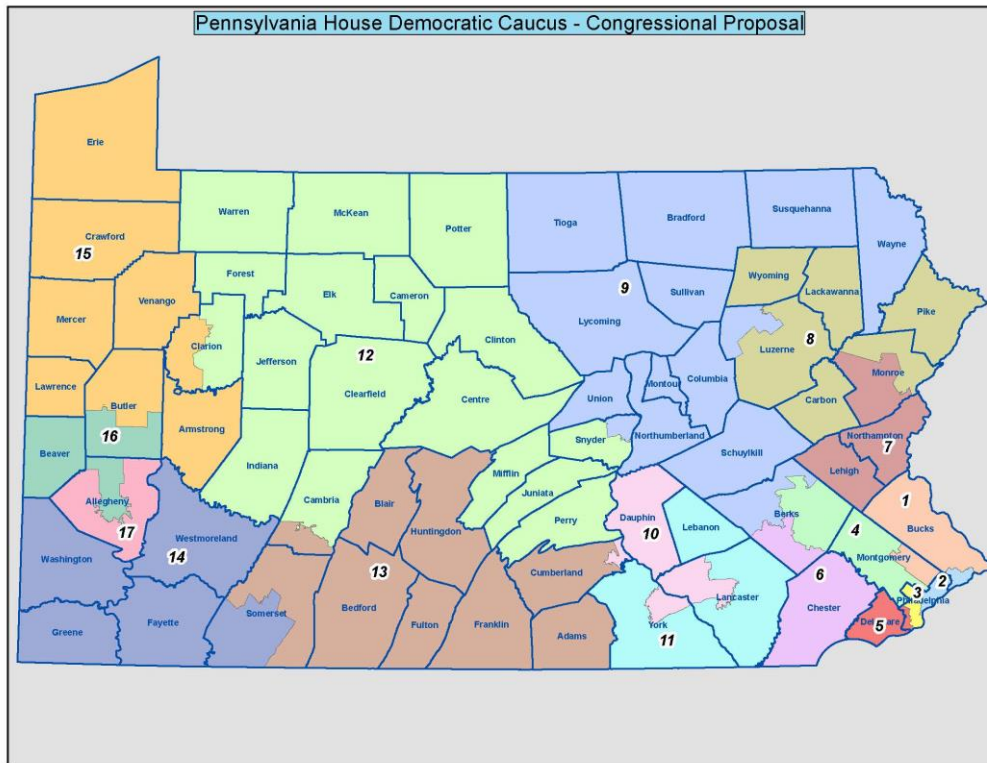
(a) Senate Map 1



(b) Senate Map 2



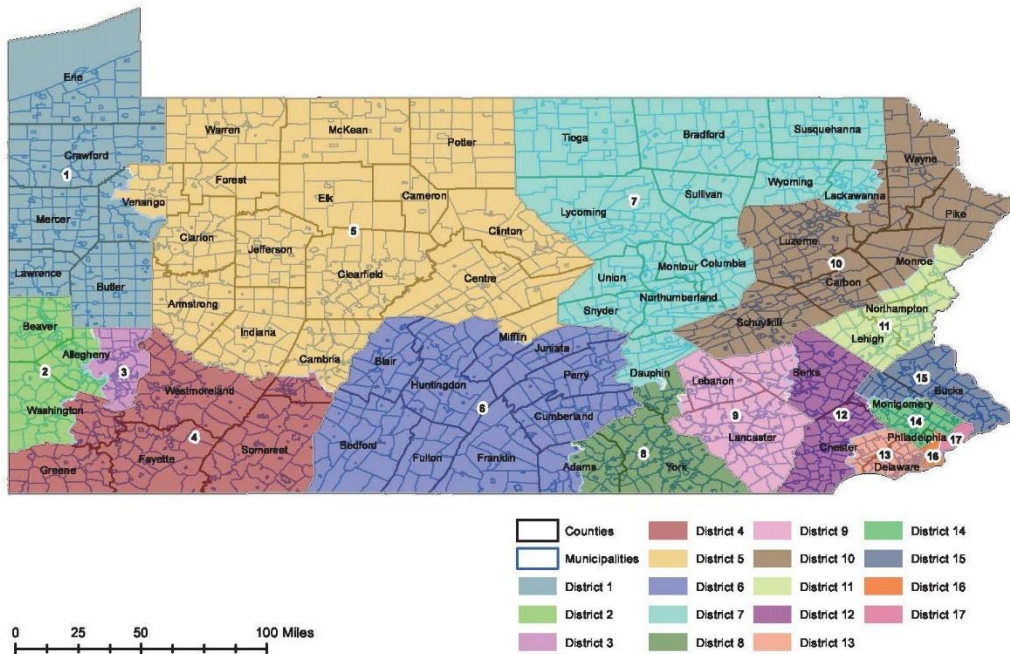
FF16. The following Plan was submitted by House Democratic Caucus Intervenor McClinton. See Br. of House Democratic Caucus Intervenor McClinton in Support of Proposed Congressional Redistricting Plan, uploaded to SharePoint as Ex. (unnumbered).



FF17. The following two Plans were submitted by the Congressional Intervenors. See Br. of Congressional Intervenors, Ex. A (Map 1) and Ex. B (Map 2).

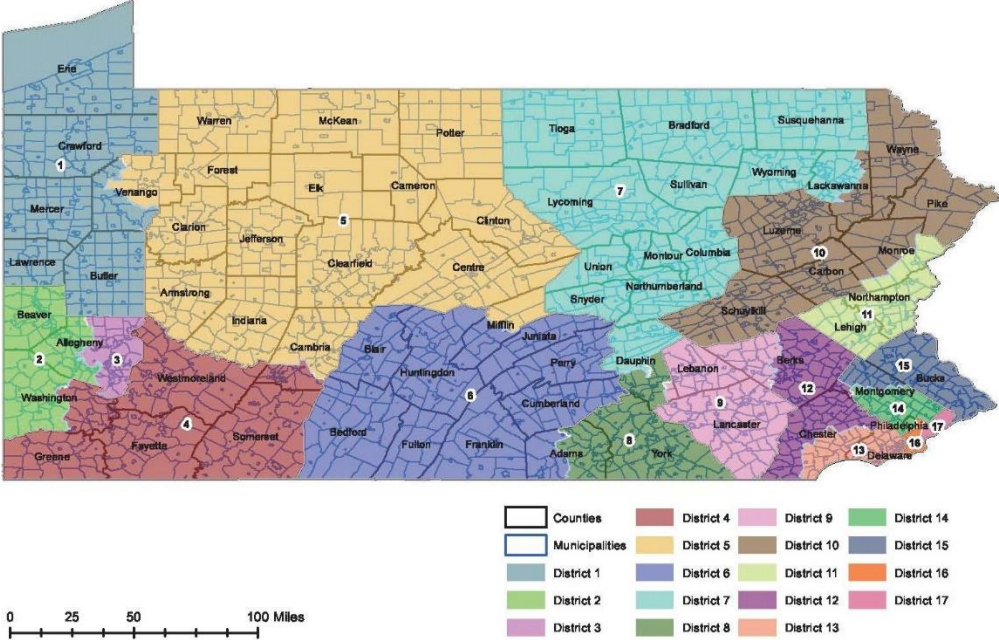
1. Resenthaler 1

Resenthaler 1 Congressional Map

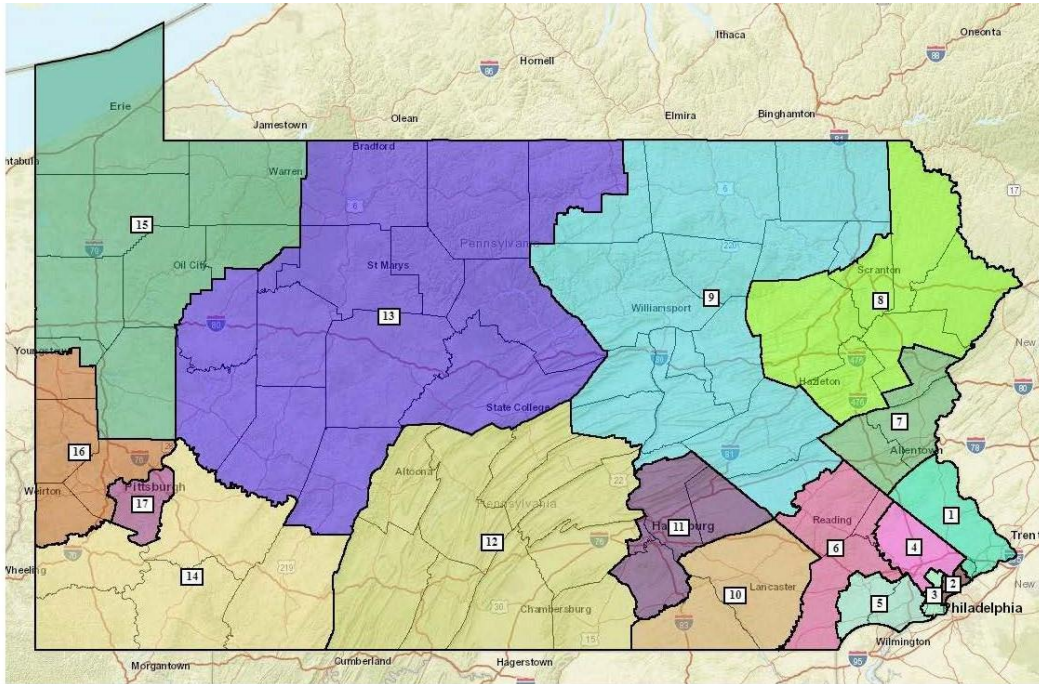


2. Reschenthaler 2

Reschenthaler 2 Congressional Map

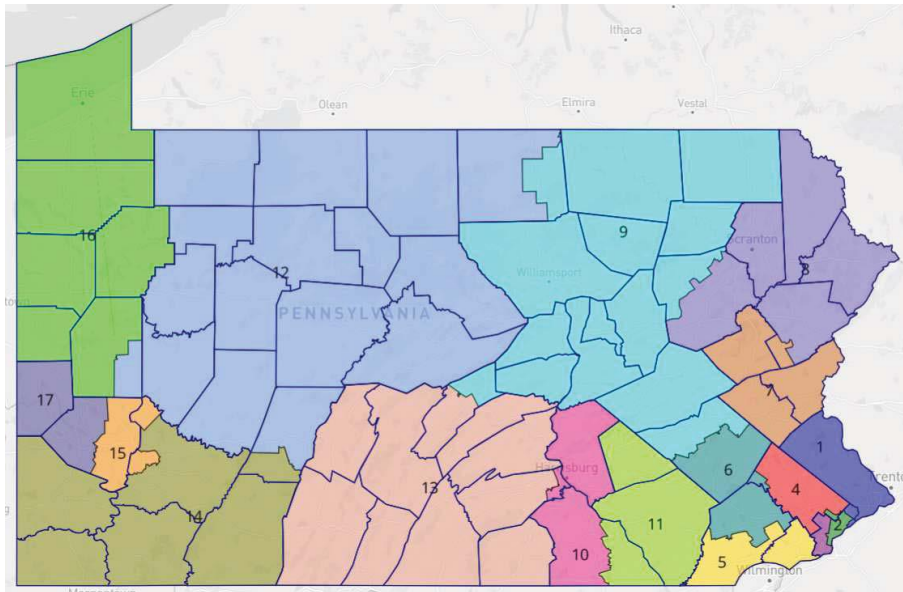


FF18. The following plan was submitted by *Amici Voters* of the Commonwealth (Voters of PA). See *Br. of Amici Curiae Voters of the Commonwealth in Support of Their Proposed Plan, Ex. A, Sean Trende Expert Report (Trende Report), App. 2.*



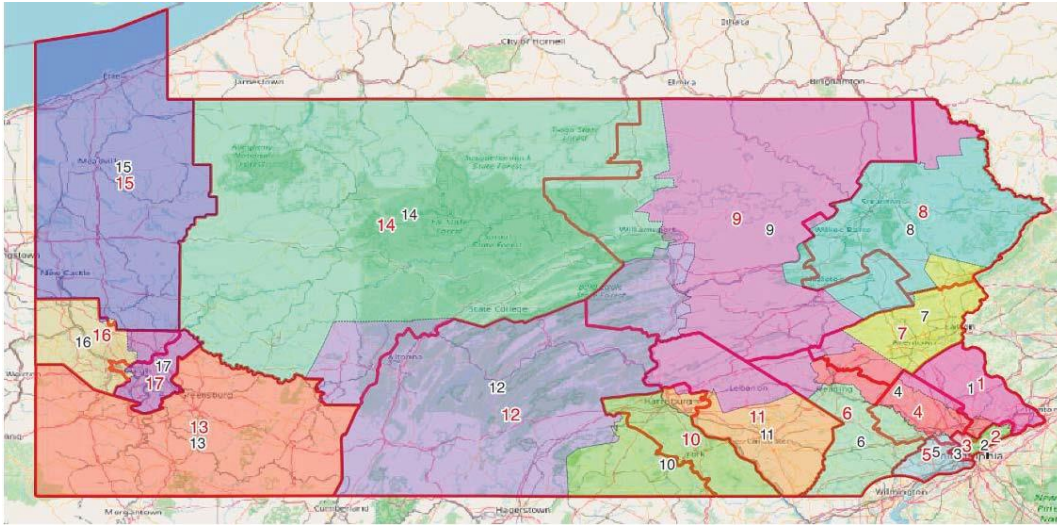
FF19. The Voters of PA are a group of Pennsylvania voters who specify that they intend to advocate and vote for Republican candidates in upcoming elections and view themselves as a “mirror image” of the Carter Petitioners. See *Voters of PA Br. at 1.*

FF20. The following Plan was submitted by *Amici Draw the Lines PA*. See Proposed Redistricting Plan and Supporting Statement of Amici Curiae Draw the Lines PA Participants (*Draw the Lines PA Br.*), Ex. A, at 1.



FF21. Draw the Lines PA is a nonpartisan education and engagement initiative of the Committee of Seventy, a nonpartisan civic leadership organization, which has organized district mapping competitions among Pennsylvania's citizens. See *Draw the Lines PA Br.*, at 3.

FF22. The following plan was submitted by Khalif Ali *et al.* See Br. of Amici Khalif Ali *et al.* (Ali Br.), Sarah Andre Expert Report (Andre Report), Ex. 2, at 1.

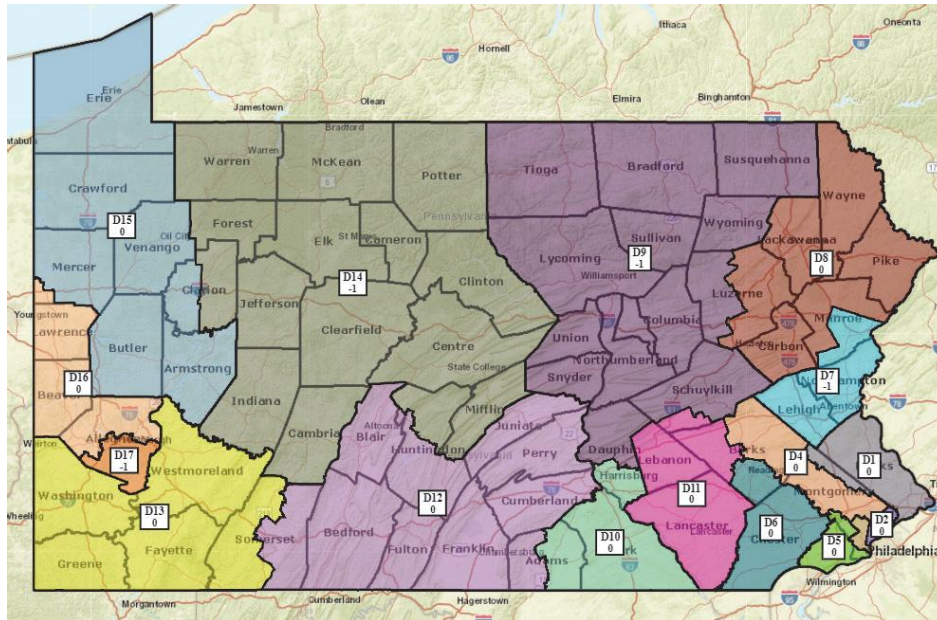


FF23. Amicus Participants Khalif Ali *et al.* (Ali Amici), used Governor Wolf’s plan as a starting point. (Ali Br. at 1 n.1.)

FF24. The Ali Amici are individual voters who are members of various advocacy groups, such as Common Cause Pennsylvania, the Voter Empowerment Education and Enrichment Movement, Fair Districts PA, and chapters of the League of Women Voters. (Ali Br. at 3-9.)

FF25. The Ali Amici advocate for the use of population data (Data Set #2), which has been adjusted to use the home addresses of state prisoners, so as to avoid the practice of “prison-based gerrymandering.” (Ali Br. at 9.)

FF26. The following plan was submitted by *Amici* Citizen Voters. See *Amicus* Participants’ (“Citizen-Voters”) Proposed Remedial Map of Congressional Districts (Citizen Voters Br.), Ex. A.



B. Evidentiary Hearing

Hearings were conducted on January 27 and 28, 2022. Six experts offered expert testimony and were subjected to cross-examination by every other Party. Each of the Parties was given one hour to conduct a direct examination of their expert witness. Cross-examination was limited to 15 minutes per Party, per expert. The Court permitted each Party to make a 15-minute opening and a 15-20 minute closing statement and to submit post-trial submissions.

C. Expert Reports and Testimony

1. Johnathan Rodden, Ph.D. (Carter Petitioners)

FF.1 In support of their redistricting plan, the Carter Petitioners presented the expert opinion of Jonathan Rodden, Ph.D.

FF.2. Dr. Rodden is a professor of political science at Stanford University, who specializes in research on the patterns of political representation, geographic location of demographic and partisan groups, and the drawing of electoral districts. (Rodden Report at 1-2.)

FF.3. Dr. Rodden has authored numerous academic papers concerning the assessment of partisan gerrymandering, has authored a book on political districts and representation, has testified as an expert witness in six previous election law and redistricting cases across the country, and is currently working as a consultant for the Maryland Redistricting Commission. (Rodden Report at 2.)

FF.4. Dr. Rodden prepared the Carter Petitioners' proposed plan.

FF.5. Pursuant to the Carter Petitioners' request, Dr. Rodden prioritized, to the extent possible, the preservation of the cores and boundaries of the existing 18-district plan enacted in 2018. (Rodden Report at 1; N.T. at 84.)

FF6. Because Dr. Rodden prioritized this consideration more than other parties, he was able to create a plan in which 86.6% of Pennsylvania's population would remain within the same district as under the existing plan—a higher percentage than any other plan submitted to the Court. (Rodden Resp. Report at 2; N.T. at 115-17.)

FF7. With regard to the maintenance of the cores of the prior districts, and with regard to the districting process generally, Dr. Rodden observed that an important consideration is the population and demographic shifts that have occurred in Pennsylvania over the past decade.

FF8. During this time, the population of denser areas has increased, and the population of more sparse areas has decreased—rendering population-dense, metropolitan areas of southeast and southwest Pennsylvania even more dense, and making less-dense rural areas even more sparse. (Rodden Report at 6-8; N.T. at 85-87.)

FF9. Dr. Rodden further noted that these population shifts are highly correlated with political party, as the growing, population-dense areas tend to contain voters who favor the Democratic party, and the rural areas that are losing population tend to contain voters who favor the Republican party. (Rodden Report at 9.)

FF10. Dr. Rodden drew the Carter Petitioners' plan to create 17 districts that are as close to equal in population as possible—deviating in population by no more than one person. (Rodden Report at 21; N.T. at 98-100.)

FF11. All of the other plans that Dr. Rodden reviewed also achieved equal population. (N.T. at 100.)

FF12. The Carter Petitioners' plan, along with all of the others, satisfied the contiguity requirement. (Rodden Report at 21; N.T. at 91.)

FF13. As for compactness, Dr. Rodden focused upon two metrics that received attention in the *LWV* decision—the Reock score and the Polsby-Popper score.

FF14. However, Dr. Rodden stressed that there is no single “best” compactness measurement, as each captures slightly different aspects of a compact district.

FF15. The Polsby-Popper score, for instance, “rewards districts with smooth perimeters and penalizes those with more contorted borders” that may nonetheless follow municipalities or geographic features, and the Reock score “can be sensitive to the orientations of a district’s extremities.” (Rodden Resp. Report at 3.)

FF16. Dr. Rodden calculated that the Carter Petitioners' plan has an average Reock score of 0.46 and an average Polsby-Popper score of 0.32. (Rodden Report at 22.)

FF17. Dr. Rodden further reported a Schwartzberg compactness score of 1.7, a Population Polygon score of 0.73, and a Convex Hull score of 0.78; however, neither Dr. Rodden’s report nor his testimony detailed the method by which these scores are computed, or their relative merits. (Rodden Report at 22.)

FF18. Although Dr. Rodden evaluated the other parties’ plans for compactness, he did not report the precise scores that he determined for each plan; rather, he concluded that all of the plans fell within a fairly “narrow range” of acceptable compactness scores. (Rodden Resp. Report at 3; N.T. at 93-94.)

FF19. With regard to political subdivision splits, Dr. Rodden drew the Carter Petitioners' plan so as to split 14 counties a total of 17 times, which he opined as performing well in comparison with other plans. (Rodden Resp. Report at 4; N.T. at 97.)

FF20. With regard to other political subdivisions, Dr. Rodden reports that the Carter Petitioners' plan splits 20 a total of 23 times, which he opined was in the middle of the distribution across the submitted plans. (Rodden Resp. Report at 4.)

FF21. Although he did not report on the division of wards, Dr. Rodden placed a unique focus on preferring not to split Voter Tabulation Districts (VTDs), which are the geographic entity in which elections are administered on the local level. (N.T. at 95-96.)

FF22. The Carter Petitioners' plan splits 14 VTDs. (Rodden Resp. Report at 6.)

FF23. In discussing his splitting of districts, Dr. Rodden stated generally, without much elaboration, that the Carter plan resolved problems that were apparent in the 2018 Remedial Plan with regard to splits of State College.

FF24. When asked how the Carter plan respects communities of interest, Dr. Rodden stated it was similar to minimizing jurisdictional splits, that it would make sense to keep certain areas together, like Harrisburg, the Lehigh Valley, and State College, and that he "attempted to avoid splitting apart those types of communities." (N.T. at 111-14.)

FF25. Further, when asked about his overall conclusions about how the Carter plan compares to the 2018 Remedial Plan, Dr. Rodden did not give a straight answer, but testified that "the maps were very similar." (N.T. at 114-15.)

FF26. Dr. Rodden explained that he did not expressly consider any partisan or racial data when preparing the Carter Petitioners' plan. (Rodden Report at 23; N.T. at 117-18.)

FF27. He testified that, after completing the plan, he evaluated its partisan performance using various metrics.

FF28. Principally, Dr. Rodden used precinct-level data from previous statewide elections in 2016, 2018, and 2020 to establish the statewide vote share for candidates from both the Democratic and Republican parties, and then used these data to estimate the partisan outcomes that might be expected in the various districts in the Carter Petitioners' plan. (Rodden Report at 23-24; N.T. at 119.)

FF29. Dr. Rodden concluded that these data suggest that the Carter Petitioners' plan produces 8 districts in which Democrats may be expected to win, but one of which would likely be highly competitive; 8 districts in which Republicans may be expected to win, but two of which would be potentially competitive; and 1 district that was effectively a "toss-up." (Rodden Report at 25.)

FF30. In his response report and his testimony, Dr. Rodden elaborated upon this analysis, opining that, although 10 of the districts facially lean Democratic based upon the statewide vote share data, two of them are very close, but none of the Republican-leaning districts were as close to "toss-ups"—meaning that the plan "could easily lead to a 9-8 Republican majority." (Rodden Resp. Report at 9; N.T. at 121-28.)

FF31. Dr. Rodden stressed that this sort of analysis does not allow predictions to be made with certainty, particularly because it does not consider the advantage often enjoyed by incumbents. (Rodden Resp. Report at 9-10; N.T. at 124-28.)

FF32. With as many competitive districts as are exemplified by the Carter Petitioners' plan, Dr. Rodden opined, "a very small change . . . can turn what appears to be a 10 to 7 District [one] way into very easily a 10 to 7 District the other way." (N.T. at 128.)

FF33. Comparing the other proposed plans submitted to the Court, Dr. Rodden opined that several appeared to be outliers in terms of their potential seat distribution.

FF34. Dr. Rodden believed that HB 2146, the Voters of PA Plan, and the Reschenthaler 1 and 2 Plans produced lower numbers of Democratic-leaning seats than the other plans. (Rodden Resp. Report at 10; N.T. at 131-32.)

FF35. By contrast, he believed the House Democratic Caucus' Plan was an outlier in the other direction—producing more Democratic-leaning districts than the others. *Id.*

FF36. Dr. Rodden conducted one final measurement of the partisan performance of the various plans—the mean-median difference.

FF37. Dr. Rodden calculated the mean-median difference of the Carter Petitioners' plan to be 0.005. (Rodden Resp. Report at 11.)

FF38. He observed that most of the plans exhibit very small mean-median differences—close to zero—which indicates that most of the plans would not be likely to produce "an unusual number of comfortable victories" for either party. (N.T. at 134.)

FF39. However, Dr. Rodden concluded that certain plans contained a median district that is more Republican than the average: HB2146, the Voters of PA Plan, the Citizen-Voters plan, and both Reschenthaler plans. (Rodden Resp. Report at 10-11; N.T. at 135-36.)

FF40. On cross-examination, Dr. Rodden conceded that he did not count splits of the six political subdivisions enumerated in the Pennsylvania Constitution in his analysis, including wards, but did consider the division of VTDs, which is not a factor in the Pennsylvania Constitution. (N.T. at 141-43.)

FF41. Dr. Rodden further clarified that his calculation of mean-median values was based upon data that were averaged across multiple elections, as opposed to data that were drawn from individual election results. (N.T. at 144-45.)

FF42. With respect to HB 2146 and the total county splits, Dr. Rodden initially testified that HB 2146 was “one of the plans with one of the higher numbers”; however, when it comes to VTD splits, he explained, “it is relatively low” in comparison to the Carter plan. (N.T. at 148.)

FF43. Dr. Rodden subsequently admitted, however, that he answered the question incorrectly that HB 2146 had a high number of total county splits, and corrected himself by stating that HB 2146’s number of counties split was “relatively low” in comparison to the Carter plan. (N.T. at 149-50; *see also* Rodden Resp. Report at 4, Table 2.)

FF44. Dr. Rodden also appeared to admit that there may be a slight discrepancy in his calculation of HB 2146’s total county subdivision splits (25 total county subdivision splits) as compared to the Legislative Data Processing Center’s tabulation of HB 2146’s total subdivision splits (18 total splits of the 16 political subdivisions), but that such discrepancy was “probably due to something like” the specific category and/or municipality terminology used. (N.T. at 151-53; *see also* Rodden Resp. Report at 5, Table 3.)

FF45. Further, Dr. Rodden affirmed, according to his analysis, that the Carter Plan had two “coin toss” districts, and that no other plan garnered more than three “coin toss” districts. (N.T. at 155-57.)

FF46. Dr. Rodden also admitted that, despite having written extensively about simulation analysis methodologies to measure partisan fairness in the past, he did not conduct a simulation analysis in this case, although he was capable of doing so, because “it didn’t occur to [him] that drawing a [sic] 100,000 other plans was something that [he] should do.” (N.T. at 157-59, 172.)

FF47. When asked about his assessment that HB 2146 was an outlier (*i.e.*, not aligned with the statewide vote share) because it generated 8 expected Democratic seats, and further, why the Carter Plan could not also be characterized as an outlier in that it garnered 10 Democratic seats, Dr. Rodden explained that he only based his assessment on a comparison to the other proposed plans in this case and not the neutral simulations. (N.T. at 158-60.)

FF48. Dr. Rodden additionally agreed that Reschenthaler Plans 1 and 2 meet the equal population requirement, are contiguous, are relatively compact, and contain the least amount of split counties, among other splits. (N.T. at 164-70.)

FF49. Further, Dr. Rodden confirmed that he only consider partisan fairness broadly in his analysis, and did not consider vote dilution or disenfranchisement. (N.T. at 183-84.)

FF50. Dr. Rodden again acknowledged that he did not consider racial data in his analysis, but stated that “it would make sense after drawing a plan to then assess its compliance with the Voting Rights Act”; however, he explained he drew the Carter Plan based on the 2018 Remedial Map and that “the districts in the

surroundings of minority communities changed hardly at all in [his] plan[, which] was the extent of his consideration of Voting Rights Act claims.” (N.T. at 190-91.)

FF51. Finally, Dr. Rodden noted that “a good share of . . . simulations end up in a range . . . that produces . . . partisan fairness . . . [, s]o it is not the case that the human geography in Pennsylvania requires us to draw unfair districts.” (N.T. at 192.)

2. Professor Daryl DeFord (Gressman Petitioners)

FF52. In support of their plan, the Gressman Petitioners offered the expert opinion of Daryl R. DeFord, Ph.D.

FF53. Dr. DeFord is an assistant professor of data analytics in the Department of Mathematics and Statistics at Washington State University. (DeFord Report at 1.)

FF54. Dr. DeFord’s work focuses upon the application of combinatorial and algebraic techniques to the analysis of social data, particularly political redistricting.

FF55. Dr. DeFord’s work on redistricting has been published in numerous academic journals.

FF56. Dr. DeFord has provided expert reports in connection with other redistricting litigation, and he has contributed analysis to the Colorado Independent Legislative Redistricting Commission. *Id.* at 1-2.

FF57. Dr. DeFord assessed the Gressman Petitioners’ plan for compliance with the traditional districting criteria, and analyzed how it and the other plans performed on those and numerous other metrics.

FF58. Dr. DeFord evaluated the plans for population equality, respect for the boundaries of political subdivisions, compactness, contiguity, partisan fairness, and the presence of minority opportunity districts. (DeFord Report at 5-6; N.T. at 202.)

FF59. With respect to population equality, Dr. DeFord determined that the Gressman Petitioners' plan achieved the best possible outcome, with a difference of no more than one person between the largest and smallest districts in the plan. (DeFord Report at 6-7; N.T. at 203-04.)

FF60. Unlike some of the other experts, Dr. DeFord identified a minor population discrepancy in two of the other plans—the Carter Petitioners' plan and the House Democratic Caucus' Plan, both of which exhibited a maximum population deviation of two persons, rather than one. (DeFord Resp. Report at 4; N.T. at 204.) Dr. DeFord confirmed that all of the proposed plans satisfy the contiguity requirement. (DeFord Resp. Report at 9.)

FF61. With regard to the splitting of political subdivisions, Dr. DeFord focused upon all six such subdivisions expressly listed in the Pennsylvania Constitution and the *League of Women Voters* decision—counties, cities, incorporated towns, boroughs, townships, and wards. (DeFord Report at 7; N.T. at 205.)

FF62. Dr. DeFord evaluates this factor by considering both the number of subdivisions that are split and the number of times that each subdivision is split into “pieces.”

FF63. For instance, a county that is split once will consist of two pieces, while a county that is split twice will consist of three pieces. (DeFord Report at 8; N.T. at 212.)

FF64. In performing his comparison of the plans, Dr. DeFord counted “pieces” that are above the minimum number, *i.e.*, not counting a whole county as one piece, and excluded municipality pieces that are necessarily created by county lines. (DeFord Resp. Report at 8.)

FF65. According to Dr. DeFord, the Gressman Petitioners’ plan splits a total of 15 counties into 17 pieces, which was less than all of the other plans except the Reschenthaler plans, both of which split 13 counties into 16 pieces, and the Draw the Lines Plan, which splits 14 counties into 16 pieces. (DeFord Resp. Report at 8, 27-28.)

FF66. Concerning municipalities—cities, incorporated towns, boroughs, and townships—Dr. DeFord counted the total number of splits, but excluded the municipality pieces that are created by county lines. (DeFord Resp. Report at 8.)

FF67. The Gressman Petitioners’ plan splits a total of 19 municipalities into 17 such pieces, which was less than all other proposed plans except the Citizen-Voters plan, to which it is equal on this measure. (DeFord Resp. Report at 8.)

FF68. The Gressman Petitioners’ plan split 15 wards into 15 pieces, which was also less than all other proposed plans except the Senate Democratic Caucus’ Plan 2, which split 14 wards into 14 pieces. (DeFord Resp. Report at 8.)

FF69. According to Dr. DeFord, adding together the total number of split counties, cities, incorporated towns, boroughs, townships and wards for each plan reveals that the Gressman Petitioners’ plan splits the fewest of all proposed plans—49. (DeFord Resp. Report at 8.)

FF70. Similarly, totaling all of the pieces that Dr. DeFord reported for each political subdivision similarly reveals that the Gressman Petitioners’ plan splits the fewest—also at 49. (DeFord Resp. Report at 8.)

FF71. This latter number is equaled by the Draw the Lines Plan. (DeFord Resp. Report at 28; N.T. 213.)

FF72. With regard to compactness, Dr. DeFord evaluated the Gressman Petitioners’ plan and all other proposed plans with four metrics—the Reock score, the Polsby-Popper score, the Convex Hull Ratio, and the Cut Edges measure. (N.T. at 215.)

FF73. Dr. DeFord explained that the Convex Hull Ratio “measures what proportion of the area of the area of the smallest convex shape containing the district is filled by the district.” (DeFord Report at 17.)

FF74. Like the Reock and Polsby-Popper scores, a higher Convex Hull Ratio indicates a greater degree of compactness. (DeFord Report at 17.)

FF75. Dr. DeFord explained that the Cut Edges measure “represents the count of the number of adjacent units like wards or blocks that are not placed in the same district.” (DeFord Report at 20.)

FF76. Unlike the Reock score Polsby-Popper score, and Convex Hull ratio, a lower Cut Edges measure indicates a greater degree of compactness. (DeFord Report at 20.)

FF77. Dr. DeFord testified that under the convex hull ratio, the map proposed by the Governor and the first Reschenthaler map scored the best. (N.T. at 264.)

FF78. Dr. DeFord also testified that these same two maps scored the best under the cut edges metric. (N.T. at 264.)

FF79. Like Dr. Rodden, Dr. DeFord emphasized that each compactness measure captures a different facet of the regularity of a shape or the notion of “compactness,” so it is important to look at a variety of measures. (N.T. at 214.)

FF80. For instance, the Polsby-Popper score “tends to prefer plans with smooth-looking boundaries,” the Reock score “tends to prefer those that are more circular in overall shape,” and the Convex Hull Ratio “prefers districts that do not contain significant indentations or tendrils.” (DeFord Report at 18.)

FF81. Dr. DeFord further explained that high compactness can result in trade-offs with other important criteria, particularly maintaining political subdivisions. (N.T. at 215-16.)

FF82. For instance, Dr. DeFord highlighted that the decision to keep all of the irregularly-shaped City of Pittsburgh within one district—which the Gressman Petitioners’ plan does—will result in a lower Polsby-Popper score than a plan that divides Pittsburgh and thereby creates smoother district boundaries that are preferred by that metric. (DeFord Report at 20-21; N.T. at 216-17.)

FF83. Notwithstanding its decision to keep Pittsburgh whole, Dr. DeFord opined that the Gressman Petitioners’ plan performed well on compactness and that its scores were quite good. (N.T. at 218.)

FF84. Dr. DeFord calculated an average Polsby-Popper score of 0.333, an average Reock Score of 0.395, an average Convex Hull Ratio of 0.799, and a Cut Edges measure of 5,546 for the Gressman Petitioners’ Plan. (DeFord Report at 9.)

FF85. Dr. DeFord further evaluated all of the proposed maps for indications of partisan fairness.

FF86. He explained that the measures used for this analysis are efforts to model how a plan treats voters from the two major parties, and whether they are

being treated equally; however, as with the other metrics, there is no single number that reveals this. (N.T. at 218-19.)

FF87. For all of these calculations, Dr. DeFord used election results from 18 statewide general elections from 2012 to 2020 in order to obtain an array of information about political geography and voter behavior. (DeFord Report at 22; N.T. at 219-21.)

FF88. Dr. DeFord first used a “majority responsiveness” metric, which asks whether, for any given election, the party that won the majority of the statewide vote share would also have been likely to win a majority of the congressional seats under a given proposed districting plan. (DeFord Report at 24-25; N.T. at 223-24.)

FF89. For the 18 elections considered, the Gressman Petitioners’ plan produced 15 majoritarian outcomes, and out of the three that did not, two of those outcomes favored Republicans and one favored Democrats. (DeFord Report at 29-30; N.T. at 226.)

FF90. This, in Dr. DeFord’s opinion, is a good indication that the Gressman Petitioners’ plan treated Republican and Democratic voters equally. (N.T. at 226.)

FF91. Dr. DeFord opined that both Reschenthaler plans and HB 2146 both performed relatively worse on this metric, as they all produced five or more counter majoritarian outcomes—all of which favored Republicans. (DeFord Resp. Report at 11-12; N.T. at 226-27.)

FF92. Like Dr. Rodden, Dr. DeFord also calculated the mean-median difference for the proposed plans; however, Dr. DeFord did so using each of the 18 elections considered, rather than using average election data, which was employed in *LWV II*.

FF93. Across all 18 elections, the Gressman Petitioners' plan produced mean-median values that remained close to zero, stayed within a small range, favored both parties. (DeFord Resp. Report at 13; N.T. at 230-31.)

FF94. By comparison, Dr. DeFord concluded that both Reschenthaler plans, and HB 2146 scored lower on the mean-median metric, in that they had larger values and produced only Republican-favoring results. (DeFord Resp. Report at 13; N.T. at 231.)

FF95. Like the mean-median values, the efficiency gap for the Gressman Petitioners' plan across the 18 elections remained low, and had results that favored both parties depending on the election considered. (DeFord Resp. Report at 14; N.T. at 234-35.)

FF96. Dr. DeFord also ran all of the proposed plans through the PlanScore website,⁴³ which is a website available to the public which provides analysis and statistics of proposed districting plans, including partisan fairness metrics such as the efficiency gap. (N.T. at 235-26.)

FF97. According to Dr. DeFord on all of the metrics reported on PlanScore, the Gressman Petitioners' plan performed the best of all of the proposed plans except for one measure—the Gressman Petitioners' plan has an average efficiency gap of 1.4% favoring Republicans, and the House Democratic Caucus' Plan has a slightly smaller efficiency gap of 1.2% favoring Republicans. (DeFord Resp. Report, App. D; N.T. at 236.)

FF98. In light of all of these measures, Dr. DeFord opined that the Gressman Petitioners' plan performed the best of all proposed plans in terms of partisan fairness. (N.T. at 238.)

⁴³ <https://planscore.campaignlegal.org/#!2020-ushouse> (last visited 2/6/22)

FF99. Dr. DeFord further evaluated the plans for compliance with the VRA, and concluded that the Gressman Petitioners' plan created three minority opportunity districts. (DeFord Report at 41-56; N.T. at 242-43.)

FF100. Dr. DeFord also determined that the Gressman Petitioners' plan was the best possible in terms of avoiding incumbent pairings. (N.T. at 240.)

FF101. On cross-examination, Dr. DeFord stated that, in his opinion, a county is a more fundamental political unit than a borough, and it is therefore more important to avoid a county split than a borough split. (N.T. at 250-51.)

FF102. He acknowledged that he was not purporting to offer an opinion on the *Gingles* factors under the VRA, and the statistics that he provided concerning candidate win rates in Philadelphia suggested that minority-preferred candidates are not usually defeated by white bloc voting. (N.T. at 283.)

FF103. He further admitted that, although he considered the impact of splitting Pittsburgh upon certain metrics, he did not consider the existence of any communities of interest in the surrounding region. (N.T. at 314-15.)

FF104. He testified that a districting plan can comply with neutral, traditional districting factors but still be optimized for partisan advantage. (N.T. at 319.)

FF105. Dr. DeFord agreed that House Bill 2146 splits the third least pieces of any of the plans he studied. (N.T. at 269.)

FF106. Dr. DeFord agreed that it is not absolutely necessary to split the City of Pittsburgh in a plan. (N.T. at 270.)

FF107. Dr. DeFord testified on cross examination that, applying the majority responsiveness metric he used to measure partisan fairness, he would consider a district potentially responsive if it elected at least one Republican and one

Democrat, and that on that measure, House Bill 2146 has the most responsive districts of the three that he studied. (N.T. at 271.)

FF108. Dr. DeFord also agreed that the Governor's Plan had the highest number of "safe Democratic" districts of the three that he looked at. (N.T. at 271.)

FF109. Dr. DeFord also admitted that, while he criticized House Bill 2146 for having, anti-majoritarian outcomes on direct examination, virtually every plan produces an anti-majoritarian outcome under the 2012 auditor election and the 2016 auditor election. (N.T. at 272.)

FF110. Dr. DeFord agreed that there is a partisan advantage to Republicans based on the political geography of the state, and that it was not necessarily a surprise to see a slight tilt favoring Republicans present in the fairness metrics. (N.T. at 291.)

FF111. Dr. DeFord admitted that he did not take into consideration any communities of interest in his evaluation of the Gressman Plan or any other plan. (N.T. at 314-15.)

3. Dr. Moon Duchin (Governor Wolf)

FF112. In support of his plan, Governor Wolf presented the expert opinions of Dr. Moon Duchin, who is a Professor of Mathematics and a Senior Fellow in the Jonathan M. Tisch College of Civic Life at Tufts University. (Notes of Testimony (N.T.) 1/27/2022, at 325; Moon Duchin Expert Report (Duchin Report), attached as Exhibit A of Governor Wolf's Brief in Support of Proposed 17-District Congressional Redistricting Plan, at 1.)

FF113. Dr. Duchin was a Guggenheim Fellow and the Evelyn Green Davis Fellow, Radcliffe Institute for Advanced Study in 2018-19, and has published numerous scholarly works about redistricting. (Duchin CV at 1, attached to Duchin Report.)

FF114. Dr. Duchin is also the principal investigator of an interdisciplinary research lab focused on geometric and computational and analytical aspects of redistricting, as well as assessing characteristics of district maps. (N.T. at 325-26; Duchin Report at 1.)

FF115. Dr. Duchin described her work, just in this election cycle, with “various line-drawing bodies such as redistricting commissions, independent and bipartisan commissions around the country which have brought [her] into call balls and strikes as [she] see[s] it and try to put plans in the context in terms of metrics trying to understand the alternatives and the political geography.” (N.T. at 325-26.)

FF116. Dr. Duchin was retained by Governor Wolf to “evaluate several maps that have been proposed as alternatives for Congressional redistricting in Pennsylvania, and particularly to compare them in terms of traditional districting principles and partisan fairness.” (Duchin Report at 1.)

FF117. Dr. Duchin evaluated the Governor’s Plan and all of the other 12 plans submitted to the Court to determine which plans satisfied an “excellence standard” with regard to the traditional redistricting criteria of *LWV II*; however, the focus of her report was on the Governor’s plan, House Bill 2146, and what she termed the Citizens’ Plan (i.e., the Draw the Lines PA *Amicus* Participants’ plan). (N.T. at 326, 329; Duchin Report at 1-2; Duchin Resp. Report at 2.)

FF118. Dr. Duchin also included the Reschenthaler and Voters of PA Plans in the various charts she created. (*See generally* Duchin Report; Response Report at 2-3.)

FF119. Dr. Duchin also performed an “ensemble analysis,” which consisted of comparing 100,000 alternative plans that followed “the rules and priorities of Pennsylvania redistricting[.]” (N.T. at 326-27; Duchin Report at 2.)

FF120. Dr. Duchin used numerous data sets, including the raw decennial census data release, and two data sets released by the Commonwealth’s Legislative Redistricting Commission. (N.T. at 331-32; Duchin Report at 1.)

FF121. Dr. Duchin explained that she examined the maps under the “big six” traditional or neutral redistricting principles, including population equality under one person, one vote, minority opportunity to elect under the VRA, the Constitution, compactness, contiguity, and respect for political boundaries and communities of interest. (N.T. at 327-29; Duchin Report at 4-6.)

FF122. Dr. Duchin also identified least change, incumbency considerations, and partisan fairness/vote dilution. (N.T. at 328; Duchin Report at 6-7.)

FF123. Dr. Duchin opined that all submitted plans “form quite well across [the] range of different metrics” she considered, but that distinctions could be made with respect to considering “tiers of adherence to the traditional principles.” (N.T. at 330-31.)

FF124. With respect to **population balance under the one person, one vote principle, and contiguity**, Dr. Duchin testified that “[a]ll 13 plans are contiguous, and all 13 plans are closely population-balanced for either Census PL population[*i.e.*, the decennial census release,] or prisoner-adjusted population.”

(Duchin Resp. Report at 2; N.T. at 331, 333; Report at 8 (noting that each plan has a “top-to-bottom” population deviation of 1).)

FF125. Dr. Duchin described contiguity as follows: “[c]ontiguity requires that, for each district, it is possible to transit from any part of the district to any other part, staying inside the district. That is, contiguity is the requirement that each district be composed of a single connected piece.” (Duchin Report at 5.)

FF126. Dr. Duchin explained, “the neutral criteria most relevant for distinguishing the plans are **compactness** and **respect for counties and municipalities.**” (Duchin Resp. Report at 2) (emphasis added).

FF127. Dr. Duchin explained that a plan’s **compactness** can be measured in several ways, including the most commonly used metrics of the Polsby-Popper score, which compares a region’s area to its perimeter via a mathematical formula, and the Reock score, which she defined as “a different measurement of how much a shape differs from a circle: it is computed as the ratio of a region’s area to that of its circumcircle, defined as the smallest circle in which the region can be circumscribed.” (Duchin Report at 5.)

FF128. Dr. Duchin explained that higher scores for both types of scores are better and are optimized at 1. *Id.* She also noted three additional metrics from *LWV II*, including *Schwartzberg*, *Convex Hull*, and *Population Polygon*. (Duchin Report at 5.)

FF129. Dr. Duchin explained that “Schwartzberg is $P/2\sqrt{\pi A}$. Convex Hull is the ratio of the district’s area to that of its convex hull, or ‘rubber-band enclosure.’ and Population Polygon is the ratio of the district’s population to the state’s population within the convex hull.” (Duchin Report at 5 n.3.)

FF130. As for **respect for political boundaries**, Dr. Duchin described the principle as requiring that “counties, cities, and other relevant political and administrative geographies should be kept intact in districts as much as practicable.” (Duchin Report at 6; N.T. at 336.)

FF131. Dr. Duchin explained that, particularly when comparing the closely related principles of compactness and political subdivision splits, “there are trade-offs, and that perhaps if you split one more county you can get a better compactness score and so on. So these all reflect decisions about those tradeoffs.” (N.T. at 338.)

FF132. With respect to compactness, and considering the above metrics, Dr. Duchin opined that the Governor’s Plan is the most compact in five of the metrics, in that it has the second best Polsby-Popper score (0.3808), the second best mean Schwartzberg score (1.6534), the best mean Convex Hull score (0.8257), the best mean Population Polygon score (0.7834), and the fourth best cut edges score (5,185). (Duchin Report at 9; Resp. Report at 2, Table 1.; N.T. at 334-35.)

FF133. The cut edges score “counts how many adjacent pairs of geographical units receive different district assignments.” (Duchin Report at 6.)

FF134. Dr. Duchin then opined that with respect for maintaining political boundaries, all plans are within a range of 13 to 17 split counties, meaning no plan averaged more than 1 county split per congressional district. (Resp. Report at 2, Table 1.)

FF135. Dr. Duchin further explained that any plan with fewer than 17 county splits is “really considered excellent” given that all are drawing 17 congressional districts, and that all plans are within a range of 16-20 split

municipalities—out of more than 2,000 total municipalities in the Commonwealth. (N.T. at 337, 493.)

FF136. Dr. Duchin compared the Governor’s Plan to House Bill 2146, which she opined consistently scores in the bottom four plans for compactness, as its mean Polsby Popper score is 11th out of 13, its mean Schwartz score is 12th out of 13, its mean Reock score is 13th out of 13, its mean Convex Hull score is 10th out of 13, its mean Population Polygon score is 9th of 13, and its cut edges score is 10th of 13, and thus is one of the least compact plans. (See N.T. at 335; Duchin Resp. Report at 2, Table 1.)

FF137. Ultimately, with respect to compactness of all the plans, Dr. Duchin opined that “the maps [submitted to the Court] are quite good across the board, but that you can still see some that are better.” (N.T. at 334.) She explained that:

By far the two most compact plans, considering these metrics overall, are VotersOfPA and GovPlan. The next two, some ways behind the leaders, are Reschenthaler1 and CitizensPlan.

When it comes to splits, I judge all of the plans to be excellent, with the possible exception of *Carter* and *SenateDemCaucus1*. All eleven others have 13-16 county splits and 16-18 municipality splits, which may be close to optimal for reasonable 17-district plans in Pennsylvania (though it is computationally intractable to prove this rigorously).

(Duchin Resp. Report at 2.)

FF138. To summarize her quantitative analysis, Dr. Duchin identified two “tiers” of excellence to grade the plans’ adherence to the traditional criteria as follows. First, she identified four plans that meet a high excellence standard for

traditional criteria: GovPlan, VotersOfPA, Rescenthaler 1, and CitizensPlan. (Duchin Resp. Report at 3.)

FF139. Dr. Duchin identified a second tier consisting of two plans that meet an excellence standard: KhalifAli and Reshcenthaler2. *Id.*

FF140. With respect to the principle of least change, Dr. Duchin compared the Governor’s Plan, House Bill 2146, and the CitizensPlan (*i.e.*, Draw the Lines PA’s plan), to the 2018 Remedial Plan.

FF141. Dr. Duchin explained that the doctrine “and associated metrics look to measure the degree of a plan’s resemblance to another plan” and that, in her comparison of the Governor’s Plan to the 2018 Remedial Plan, she explained, “[i]f you believe that the old plan is a good one, if you believe that the old plan has shown itself to perform in ways that are fair, if you believe that the old plan represents the principles that you’re trying to embody, then it does make some sense that you try to look a lot like it.” (N.T. at 345-47.)

FF142. Dr. Duchin concluded that the Governor’s Plan “keeps the districts intact to the greatest extent of these three alternatives.” (Duchin Report at 10, Table 4.)

FF143. Dr. Duchin addressed protection of incumbents, which she explained means, where possible, “double-bunking” two incumbent members of Congress in the same district should be avoided. (N.T. at 347-8.)

FF144. Dr. Duchin determined that the Governor’s Plan, CitizensPlan, and House Bill 2146 each create two districts with two incumbent members of Congress and one district with no incumbent. (Duchin Report at 10, Table 5.)

FF145. Dr. Duchin also testified that it was her understanding “that District 5 and the Governor’s plan [pairs] two Democratic incumbents. Just for the

record, in my view, when I'm trying to assess whether a plan is a gerrymander for one party, I think it would avoid pairing incumbents of that party. So to me, this is a sign that this is not a Democratic gerrymander plan.” (N.T. at 349; *see also* Duchin Report at 10, Table 5.)

FF146. Dr. Duchin next described, with respect to communities of interest, that the fundamental concept is that there is value to maintaining “geographical areas where the residents have shared interests that are relevant to their representation. . . . [T]his could be shared history, shared economics, shared culture, many other examples.” (N.T. at 342-43.)

FF147. Dr. Duchin clarified, however, that the principle “doesn’t always mean a community should be held whole. Sometimes it’s more effectively split. But they should be kind of top of mind for the line drawers, as they draw.” (N.T. at 343.) In her report, Dr. Duchin noted that communities of interest were a top priority consideration in the Governor’s plan, and that it was “drawn after a robust public input process and in view of hundreds of collected comments and suggestions.” (Duchin Report at 11-12.)

FF148. Dr. Duchin opined that the Governor’s Plan is “really an excellent plan on the grounds of the traditional principles. It’s one of the very best. In my view it’s extremely compact. It is economical in terms of political boundary splits and the splits that it is . . . have a good story. I find it to do well by the likes of incumbent pairing and least change across the board. It’s an excellent plan on traditional districting principles.” (N.T. at 349-50.)

FF149. In determining whether any maps exhibited partisan fairness and accountability and responsiveness to voters, Dr. Duchin used numerical measures that “address how a certain quantitative share of the vote should be

translated to a quantitative share of the seats in a state legislature or Congressional delegation.” (Duchin Report at 13.)

FF150. Dr. Duchin described partisan fairness and accountability to voters in terms of two core principles: (1) a political party winning the majority of votes ought, as a general matter, to win a majority of congressional seats (the “Majority-Rule Principle”); and (2) elections with close vote margins ought generally to result in a close split in the number of seats won (the “Close-Votes-Close-Seats Principle”), which she explained is close to the principle of Majority Rule, *i.e.*, that “a party or group with more than half of the votes should be able to secure more than half of the seats.” (Duchin Report at 13.)

FF151. Using the same election information for the three plans, and with the help of figures and graphics in her initial Report, Dr. Duchin established that the Governor’s Plan and the Draw the Lines PA’s (CitizensPlan) “are far superior at leveling the partisan playing field,” whereas she characterized House Bill 2146’s performance as “consistently converting close elections to heavy Republican representational advantages.” (N.T. at 364-65; Duchin Report at 14-16.)

FF152. Dr. Duchin considered the partisan fairness of the Governor’s Plan and all of the other maps using her “ensemble” of 100,000 randomly drawn districting plans to see how they would perform across recent elections in terms of partisan fairness.

FF153. In considering partisan fairness, Dr. Duchin used the following metrics: the efficiency gap, the Eguaia artificial partisan advantage, the mean-median score, and the partisan bias score. (Duchin Report at 17.)

FF154. Dr. Duchin defined “efficiency gap” as being “based on the idea of wasted votes, defined as any winning votes in excess of 50%, or any losing votes at all.” (Duchin Report at 17.)

FF155. Dr. Duchin explained that a plan’s “Eguia artificial partisan advantage compares the outcomes under districted plurality elections to the outcomes under ostensibly neutral political subdivisions, such as counties.” (Duchin Report at 17.)

FF156. Dr. Duchin explained that the “mean-median score” indicates “how much of the vote in a state is needed to capture half of the representation.” (Duchin Report at 17.)

FF157. Dr. Duchin explained that a “partisan bias score” captures “how much of the representation would be captured by each party if the election underwent a uniform partisan swing to a 50-50 share.” (Duchin Report at 17.)

FF158. Dr. Duchin’s results appear in Table 3 of her Responsive Report, as to which she explained: “one thing that stands out is that the Governor’s plan is excellent across the board, that in all four of these metrics it gives scores that are either the closest or nearly the closest to zero.” (N.T. at 372.)

FF159. Dr. Duchin further concluded that of all the other plans considered, “the Governor’s Plan dominates[, meaning it is equal or better in every metric,] 10 and is in a trade-off position with the other two (Carter and HouseDemCaucus).” (Duchin Resp. Report at 4.)

FF160. On cross-examination, Dr. Duchin conceded that “the Gressman [Petitioners’] plan is an excellent plan.” (N.T. at 433.)

FF161. Dr. Duchin admitted to opining in her report that HB 2146 is population balanced and contiguous, shows strong respect for political boundaries, and is reasonably compact. (N.T. at 434-35.)

FF162. Dr. Duchin admitted, in relation to HB 2146, that “[o]n splits it’s better” than the Governor’s plan, and that the Governor’s plan is only better on the compactness criteria. (N.T. at 435-36.)

FF163. When asked whether Governor’s plan’s splitting of the City of Pittsburgh allowed for the creation of two Democratic leaning seats as opposed to one, Dr. Duchin relayed that she would “have to look at the seats surrounding it in plans that keep it whole . . . that’s not an [sic] specific analysis that I’ve done to say that it’s two instead of one” and that she “didn’t look at whether the district surrounding the one that contains Pittsburgh specifically would be Democratic leaning.” (N.T. at 436.)

FF164. Dr. Duchin further disclosed to the Court on cross-examination that in generating 100,000 random plans (*i.e.*, maps) with a computer, which was programmed only to honor Pennsylvania’s minimum constitutional requirements, the “[r]andom plans tend to exhibit pronounced advantage to Republicans across this full suite of elections.” (Duchin Jan. 24, 2022 Report at 18.)

FF165. On the next page of her report, still analyzing the 100,000 plans drawn by a non-partisan, non-biased computer, Dr. Duchin once again concluded that “random plans favor Republicans[.]” (Duchin Jan. 24, 2022 Report at 19.)

FF166. Dr. Duchin, far from backing away from this analysis, agreed that these 100,000 plans produced a “pronounced advantage to Republicans,” N.T. 1/27/22 at 449:1-12.3, and that the most “typical outcome” for any randomly drawn, constitutionally compliant plan, which takes no account for impermissible partisan

considerations, is one that will produce a Republican “tilt” based on election projections. N.T. 1/27/22 at 450:10-16; *see also* Duchin Jan. 24, 2022 Report at 17 (“In this section, I present a series of images that reinforce the theme elaborated above: the political geography of Pennsylvania creates a districting landscape that is tilted toward Republican advantage.”).

FF167. In this regard, Dr. Duchin testified as follows:

Q. But the most typical outcome is plans with a Republican tilt. Fair?

A. Absolutely. And I’m not aware of any rule that requires that we pick the most typical. I think we’re trying to choose an excellent plan.

(N.T. at 450) (testimony of Dr. Duchin).

FF168. Upon questioning by Congressional Intervenors’ counsel, Dr. Duchin conceded that Reschenthaler 1 and Reschenthaler 2 are both contiguous, closely balanced in terms of population, and “reasonably compact.” (N.T. at 458.)

FF169. With respect to county splits, Dr. Duchin affirmed that Reschenthaler 1 and Reschenthaler 2 split 13 counties, which, she admitted, is the lowest county split of all the maps she reviewed and are examples of “aggressive pursuit of county integrity.” (N.T. at 458-59.)

FF170. Dr. Duchin admitted that the Reschenthaler maps had the lowest “county pieces” (29) and municipal splits (16), and that it was tied for the lowest with respect to “municipal pieces” (33). (N.T. at 459.)

4. **Michael Barber, Ph.D. (House Republican Intervenors Cutler & Benninghoff)**

FF171. The House Republican Intervenors presented the opinions and expert report of Dr. Michael Barber, who is an associate professor of political science at Brigham Young University and faculty fellow at the Center for the Study of Elections and Democracy in Provo, Utah. (Barber Report at 1.)

FF172. Dr. Barber received his Ph.D. in political science from Princeton University in 2014 with emphases in American politics and quantitative methods/statistical analyses. *Id.*

FF173. Dr. Barber teaches a number of undergraduate courses in American politics and quantitative research methods, including classes about political representation Congressional elections, statistical methods, and research design. *Id.*

FF174. The House Republican Intervenors asked Dr. Barber to review HB 2146.

FF175. Dr. Barber first examined the political geography of Pennsylvania and concluded that partisan tendencies are not evenly distributed throughout the Commonwealth, as “Democratic majorities are geographically clustered in the largest cities of the state while Republican voters dominate the suburban and rural portions of the state[,]” which puts “the Democratic Party at a natural disadvantage when single-member districts are drawn.” (*See* Barber Rep. at 5, 8, Figure 1.; N.T. at 506-10.)

FF176. Dr. Barber opined that “districts drawn to be contiguous, compact, and contain minimal county and municipal splits will naturally create several districts in the Philadelphia and Pittsburgh areas that contain substantial Democratic majorities with many ‘wasted votes.’” (Barber Report at 5, 9.)

FF177. Dr. Barber stated that because Philadelphia is large enough to constitute roughly 2.1 congressional districts, any plan that attempts to avoid splitting counties would draw two districts entirely within the City of Philadelphia and will be overwhelmingly Democratic and have thousands of wasted votes. (Barber Report at 9.)

FF178. Dr. Barber opined that because Pittsburgh is not large enough to contain a single congressional district, any plan that draws geographically compact districts that avoid splitting counties and cities will contain a district within Allegheny County that also contains the City of Pittsburgh, and it will be extremely Democratic as a result of strong Democratic support in Pittsburgh and its immediate suburbs. (Barber Report at 9; *see also* Barber Rebuttal Report at 9.)

FF179. Dr. Barber explained his methodology in determining whether HB 2146 was a partisan gerrymander. (Barber Report at 11.)

FF180. Specifically, Dr. Barber prepared a set of 50,000 simulated maps using only the traditional redistricting criteria of equal population, compactness, contiguity, and minimizing political subdivision splits. (Barber Report at 13-14; N.T. at 518.)

FF181. Dr. Barber did not consider partisanship, race, the location of incumbent legislators, or other political factors in his analysis, but he found this set of simulated plans was helpful because it provides a set of maps to compare to HB 2146 that also accounts for geographic distribution of voters. (Barber Report at 11; N.T. at 515.)

FF182. Dr. Barber explained that by comparing HB 2146 to the simulated districts, “we are comparing the proposal to a set of alternative maps that

we know to be unbiased that holds constant with the political geography of the state.” (Barber Report at 11; N.T. at 515-17.)

FF183. Alternatively, Dr. Barber explained, if HB 2146 “significantly diverges from the set of simulated maps, it suggests that some other criteria that were not used in drawing the comparison set of maps may have guided the decisions made in drawing the proposed map.” *Id.*

FF184. With regard to population, boundary splits, and compactness, Dr. Barber opined that HB 2146, which splits 15 counties, is within the range of county splits in the simulations. (Barber Report at 16; Barber Rebuttal Report at 8, Table 1.)

FF185. Dr. Barber testified that HB 4126 only divides 16 municipalities, one of which is Philadelphia, which has to be divided because the city population is more than a single district. *Id.*

FF186. Dr. Barber testified that HB 2146 has only nine precinct splits; thus, overall, the plan performs very well regarding political subdivision splits. *Id.*

FF187. As for compactness, Dr. Barber opined that HB 2146’s average district compactness score (Popper-Polsby) of 0.32 closely aligns with the results of the simulations, which garnered a 0.28 score. (Barber Report at 16.)

FF188. Dr. Barber considered partisan lean of districts, analyzing a set of all statewide elections from 2012-2020, which resulted in 9 Democratic-leaning seats and 8 Republican-leaning seats, whereas the current delegation is represented by 9 Democrats and 9 Republicans, and further determined the most likely outcome in his 50,000 simulated maps, created without using partisan data, is 8 Democratic-leaning seats and 9 Republican-leaning seats. (Barber Report at 23, Figure 3; N.T.

at 518-20, 532-33.) He further opined that HB 2146 creates a significant number of competitive districts. (Barber Report at 19.)

FF189. Specifically, in analyzing districts that have a Democratic vote share of 0.48 to 0.52, a common range when analyzing competitive elections, HB 2146 creates five competitive seats, four of which lean Democratic, which is more competitive districts than any other plan. (Barber Report at 13, 19, 21, Figure 2; N.T. at 529.)

FF190. Dr. Barber testified that at a district-by-district level, HB 2146 reflects partisan fairness consistent with the range of outcomes seen in simulated plans. (Barber Report at 22-23.)

FF191. Dr. Barber testified that for each district, HB 2146 sits in the middle of the distribution of the simulations. (Barber Report at 23-24, Figure 4.)

FF192. On other partisan fairness metrics, including mean-median, efficiency gap, and a uniform swing analysis, Dr. Barber opined that HB 2146 is demonstrated to be very nearly unbiased, with a mean-median of -0.015, which is very close to zero and which demonstrates that HB 2146 is more favorable to Democrats than 85% of the simulation results. (Barber Report at 27-28, Figure 5, 30-31; Barber Rebuttal Report at 21-22.)

FF193. Dr. Barber testified that this further demonstrates that HB 2146 is fair. (Barber Rep. at 27-34, Figures 5-7.)

FF194. With regard to the efficiency gap for HB 2146, which is -0.02, and very close to zero, Dr. Barber testified that it shows that Democratic votes are not much more likely than Republican votes to be “wasted” across districts. (Barber Report at 31.)

FF195. Dr. Barber testified that HB 2146's mean median score and efficiency gap score are within the range, in that they have similar scores compared to the other plans; the difference in scores for the other plans, however, can be accounted for based on the particular elections used for the calculations. (N.T. at 543-50.)

FF196. Dr. Barber opined further that for the other plans that garnered 10 Democratic-leaning seats with an efficiency gap of 0.034, it shows those plans are favorable to Democrats, as "positive numbers indicate bias for Democrats, [and] negative numbers indicate bias for Republicans." (Barber Rebuttal Report at 22.)

FF197. Dr. Barber said there are differences, which can be accounted for based on the particular elections that are used for the calculations. (N.T. at 550.)

FF198. Dr. Barber performed a uniform swing analysis, which considers how a plan performs under a variety of different electoral environments by randomly adding certain percentages from previous elections uniformly to each district in the plan. (Barber Report at 33-34.)

FF199. Like the other metrics, Dr. Barber's uniform swing analysis demonstrated that the HB 2146 is fair, as it is nearly exactly in the middle of the distribution, meaning roughly half of the simulations are worse for Democrats and nearly half are better. (Barber Report at 34, Figure 7.)

FF200. Dr. Barber additionally noted in his Rebuttal Report that the uniform swing measure varies across the all plans considered from 7.9 to 10.1 expected Democratic-leaning districts; however, HB 2146 is in the middle of the simulation results. (Barber Rebuttal Report at 22.)

FF201. Dr. Barber also conducted a district-by-district racial composition of HB 2146, examining 1,852 simulated plans from his race-blind

sample that likewise created 2 majority-minority districts including 1 majority Black district. (Barber Rep. at 35-36; N.T. at 515-16.)

FF202. Dr. Barber generated another set of 5,000 simulated race conscious maps where he instructs the model to ensure that every simulated plan had at least 3 districts that have at least 35% non-white voting age population. (Barber Report at 36; N.T. at 518.)

FF203. From this, Dr. Barber determined that even when using “race conscious” simulations, a map with 9 Democratic-leaning seats, *i.e.*, the same as HB 2146, remains the most common outcome, occurring in 70.6% of the simulations. (Barber Report at 35-36.)

FF204. When asked whether he thought House Bill 2146 was the best plan, Dr. Barber stated “I think that that is not for me to decide. I think that is the unenviable task of this Court.” (N.T. at 559.)

FF205. With respect to Dr. Barber’s opinions as to the other plans, Dr. Barber testified that looked specifically at how the other plans treated Pittsburgh because of the fact that Pittsburgh is not large enough such that it has to be split, and that all the other plans, including the Governor’s, Senate D1 & D2, Draw the Lines PA, and Khalif Ali, stand out as examples of plan “possibly violating the neutral districting criteria” in an attempt “to avoid municipal splits unnecessarily by intentionally dividing Pittsburgh for partisan gain.” (N.T. at 524-25; Barber Rebuttal Report at 8, Table 1., 23.)

FF206. On that topic, Dr. Barber believed “it calls for additional inquiry as to why that might be the case.” *Id.*

FF207. With regard to the House Democrats’ plan specifically, which combines Pittsburgh with rural, heavily Republican voters in Beaver and Butler

Counties to create 2 Democratic-leaning districts rather than 1 heavily Democratic district in Allegheny County, and which is poised to create 11 Democratic leaning districts, Dr. Barber characterized the House Democrats' plan as "an extreme outlier," as none of the simulations generated that outcome. (N.T. at 534; Barber Rebuttal Report at 15.)

FF208. Dr. Barber also noted that HB 2146, Senate D1 Plan, Voters of PA plan, and both Reschenthaler Plans generate 9 Democratic-leaning districts, which "are in line with the modal outcome in the race-conscious simulations and are within the central part of the distribution in the race-blind simulations. (Barber Rebuttal Report at 15-16.)

FF209. When compared to the non-partisan simulations conducted, Dr. Barber concluded that nine of the other plans are Democratic partisan outliers, including the Governor, Carter, Gressman, House D, Senate D1 & D2, Citizen Voters, and Draw the Lines PA plans. (Barber Rebuttal Report at 23.)

FF210. On other measure of partisan bias, Dr. Barber concluded that there are variations amongst the plans, but that "all share the common feature of being generally more favorable to Democrats than the non-partisan simulations." (Barber Rebuttal Report at 23.)

FF211. On cross-examination, Dr Barber conceded that every other plan except for the two Reschenthaler plans have mean-median scores closer to zero, meaning they are less biased than HB 2146. (N.T. at 575-78.)

FF212. Dr Barber agreed that, in conducting his analysis, he did not consider all elections that took place for every office, incumbent pairings, if every plan had two or three majority-minority voting age populations, voter registration information (in terms of votes cast or the partisan registration of individual voters),

equal population (as he had a variance of 30), the splitting of wards, or communities of interest concerns. (N.T. at 586-91, 593-94, 628-29, 646, 649-54.)

FF213. When asked whether assigning the City of Pittsburgh to one congressional district would be considered packing, Dr. Barber explained, “So I think this is an excellent example because sometimes what might be called intentional partisan gerrymandering might actually be the result of the combination of the geography of the state and neutral redistricting criteria. . . . on prospective would look at [the splitting of Pittsburgh] and say that’s packing, that’s clearly gerrymandering. And the other person might say oh no, that’s not packing at all. That’s just following the neutral redistricting criteria [stating not to split Pittsburgh].” (N.T. at 627-28.)

5. Dr. Keith Naughton (Congressional Intervenors)

FF214. The expert testimony of Keith Naughton, Ph.D., an expert in public policy and political science, was offered by the Congressional Intervenors for the purpose of demonstrating that they drew their lines with the goal of keeping communities of interest intact and to dispel any notions that the lines they drew were for partisan purposes.

FF215. Dr. Naughton began by acknowledging that he not a mathematician and he has “no particular experience in redistricting,” and has never served as an expert in redistricting litigation before. (N.T. at 668-69, 777.)

FF216. Dr. Naughton spent 15 years working in Pennsylvania campaign politics at all levels. (N.T. at 687.)

FF217. Dr. Naughton’s areas of expertise include congressional politics, about how constituents interact with their members, and the theoretical basis of representation. (N.T. at 687-90.)

FF218. Dr. Naughton explained that “much of [his] professional career has been dedicated to helping Republican candidates in Pennsylvania win their seats.” *Id.* at 769-70. However, he believed his opinions apply equally whether someone is a Republican or Democrat. *Id.*

FF219. Dr. Naughton agreed that his report “does not identify any particular methodology” that he used to arrive at his conclusions, and does not “cite any authority or particular evidence for [his] opinions.” N.T. at 779; *see also id.* at 813. Rather, his expert opinions were based on his work experience.

FF220. Dr. Naughton conceded that he provided no quantitative analysis of how any of the proposed plans perform on the neutral redistricting criteria. *Id.* at 792.

FF221. The testimony of Dr. Naughton was unique in this regard as no other expert was offered to opine on the community interests undergirding the Free and Equal Elections Clause.

FF222. The Court is not particularly persuaded by the argument that we should not credit Dr. Naughton’s testimony because he has a history of working for candidates seeking political and judicial office for the Republican Party.

FF223. Suffice it to say, given the nature of this litigation, most of the litigants and their experts have histories of representing one party or the other.

FF224. The Court has no intention of crediting one party or expert over the other based on that proclivity.

FF225. Despite the fact that Dr. Naughton had never testified before as an expert in redistricting litigation, the Court nevertheless finds his testimony helpful, especially his opinions on the issues of the importance of keeping communities of interest intact, how that relates to a congressional representative's ability of to respond to the unique and varied inquiries of his or her constituents and the reasons why the lines on Reschenthaler Plan 1 and 2 were drawn where they were.

FF226. Dr. Naughton testified that keeping people with common interests together allows for better representation of those interests. (N.T. at 697-98.)

FF227. Dr. Naughton testified in this regard as follows:

Q. So if you were going to design, for instance, a district in a region that had a significant elderly population, you would want to know that. Right?

A. Yes.

Q. Why?

A. Well because they have common interests. And you know, grouping with people with common interests is very important because, besides this R versus D issue, they have specific needs. They need Social Security protected. They need money for Access, you know, for public transit. They - - you know, they need just a whole variety of issues. You know, people who are aged require healthcare and so forth. Well, if you have them sort of split up chock-a-block in different districts, what kind of representation are they going to get?

Id.

FF228. Regarding the decision to maintain the City of Pittsburgh in one district in Reschenthaler maps 1 and 2, Dr. Naughton testified Pittsburgh's

communities of interests are best represented by keeping the City within the same district. (N.T. at 712-15.)

FF229. Dr. Naughton thought splitting Pittsburgh into two districts was a “terrible idea.” *Id.* at 713. He explained:

1. Because the City is its [own] political unit and the City is a diverse city, there’s a lot of different interests. But the fact that it’s together unites people’s interests for resources. They vote, you know, for the same elected officials. I mean, just the fact that they are within this municipal unit gives them a serious of common interests. And I think splitting them up, I think, that’s a mistake. I think it dilutes their advocacy.

Id.

FF230. Regarding the decision to connect Philadelphia with Delaware County in District 16 in Reschenthaler maps 1 and 2, Dr. Naughton testified that Delaware County and Philadelphia County share similar communities of interest along their border, and that a map connecting them was ideal. (N.T. at 786; 840-41)

FF231. With respect to the decision to place Scranton and Wilkes-Barre in different districts in Reschenthaler maps 1 and 2, Dr. Naughton testified that Scranton and Wilkes-Barre, in the past, were in separate districts and that those communities prefer being in separate districts. (N.T. at 734-36.)

FF232. With regard to partisan fairness and the effect of political geography, Dr. Naughton testified that nonpolitical issues cause voters and nonvoters to coalesce in certain parts of the state. (N.T. at 696.)

FF233. In Dr. Naughton’s view, scientific models predicting future elections cannot account for the various factors that contribute to winning an

election, including the party of the current president, whether it is a mid-term election, the state of the economy, and campaign fundraising. (N.T. at 700-04.)

FF234. Dr. Naughton agrees that scientific models used by Dr. Rodden, Dr. DeFord, and Dr. Duchin do not account for these extraneous factors that contribute to winning an election. (N.T. at 703.)

FF235. According to Dr. Naughton, running congressional races in Pennsylvania is “very geographical,” and certain mapping choices, such as splitting the City of Pittsburgh or splitting Bucks County and Philadelphia can result in losing representation. (N.T. at 713-15.)

FF236. In Dr. Naughton’s expert opinion, there is no perfect variable to put in the equation to create a perfect map because there is going to be subjectivity. (N.T. at 766.)

6. Dr. Devin Caughey & Michael Lamb (Senate Democratic Caucus Intervenors)

FF237. In support of its two plans, Senate Map 1 and Senate Map 2, the Senate Democratic Caucus offered the expert report and testimony of Dr. Devin Caughey, an Associate Professor in Political Science at the Massachusetts Institute of Technology.

FF238. Dr. Caughey’s academic specialty involves the interaction between American politics and statistical methods, focusing primarily on public opinion, election, and representation. (N.T. at 894.)

FF239. Dr. Caughey has published numerous academic articles, particularly with regard to partisan gerrymandering at the state level and how it relates to the representational process, and has previously testified as an expert

witness, offering his opinion as to the partisan bias of a districting map in the State of Oregon. *Id.* at 895.

FF240. In conducting his current analysis, Dr. Caughey, focusing only on partisan bias factors, reviewed the Supreme Court’s 2018 Map, Governor Wolf’s plan/map, the House Republican Caucus plan/map, and the Reschenthaler 2 map. *Id.* at 896-98.

FF241. Dr. Caughey then compared those plans/maps with Senate Map 1 and Senate Map 2 to evaluate partisan fairness based on four commonly accepted measurement models, namely (1) partisan symmetry/partisan bias, (2) the efficiency gap, (3) the mean-median difference, and (4) declination.

FF242. At the hearing, Dr. Caughey explained that an assessment of partisan symmetry/partisan bias “is based on the concept of what’s called the seats votes curve [and] the seats votes function, which is basically just the relationship between a party’s vote share and their expected seat share.” *Id.* at 900-01.

FF243. As an example, Dr. Caughey stated that it is “sort of easy to think about when we just consider what happens if both parties get 50 percent of the vote[.] If they both get 50 percent of the vote, they tie, right. But if they win 50 percent of the vote and one party gets 55 percent of the seats, that indicates a bias of five percentage points in favor of the party that got more seats[.] So that is what we call partisan bias.” *Id.* at 903.

FF244. Concerning the efficiency gap, Dr. Caughey testified that it is “another way of operationalizing [the] notion of a partisan fairness,” *i.e.*, “that a map should treat the parties equally or mutually,” stating that “instead of focusing directly on the seats votes curve, it focuses on [the] notion of wasted votes.” *Id.* at 905.

FF245. According to Dr. Caughey “the efficiency gap is based on the idea that the number of wasted votes or the share of wasted votes for each party should be equal,” elaborating that a “wasted vote” is “a vote cast for a losing

candidate or a vote cast for a winning candidate beyond the minimum necessary to ensure that that candidate won, beyond 50 percent plus one.” *Id.*

FF246. Dr. Caughey stated that “when one party wastes more votes than the other party, then their votes, in sum and substance, count for less,” because “[m]ore of their votes don’t make a difference in terms of who wins seats” and, thus, the votes are “diluted relative to the other party.” *Id.* at 905-06.

FF247. In discussing the mean-median factor, Dr. Caughey testified that “the mean-median difference . . . is [] the difference [between] the average vote share amongst districts, which if [it] turn[s] out equal is [] a statewide share that a party earns, and the difference in the median district.” *Id.* at 909.

FF248. Dr. Caughey explained that “mean-median [] picks up on the asymmetry of the distribution of district partisanship, the skewness . . . of the distribution of partisanship.” *Id.*

FF249. Concerning the measure of declination, Dr. Caughey testified that this measurement “is a little bit more technical and recently developed measure,” adding that “[i]t was originally formulated in thinking about how the angles, if you line up all the districts and the Democratic districts are over here and the Republican districts [are] over here, the angle—how the angle changes where partisanship shifts,” and “where party control shifts.” *Id.* at 910.

FF250. In his expert report, Dr. Caughey calculated the figures for the various plans as follows. First, the Supreme Court’s 2018 Map had a partisan bias of 2.1%; an efficiency gap of 2.9%; a mean-median of 0.8 %; and a declination of 0.08%. Second, Governor Wolf’s plan had a partisan bias of 2.9%; an efficiency gap of 3.5%; a mean-median of 1.0%; and a declination of 0.10%. Third, the House Republican Caucus plan/map had a partisan bias of 6.3%; an efficiency gap of 6.6%; a mean-median of 2.3%; and a declination of 0.19%. Fourth, Senate Map 1 had a partisan bias of 1.8%; an efficiency gap of 2.3%; a mean-median of 0.7%; and a

declination of 0.06%. Fifth, Senate Map 2 had a partisan bias of 1.5%; an efficiency gap of 2.4%; a mean-median of 0.5%; and a declination of 0.07%. (Caughey Report at 18.) In his supplemental report, Dr. Caughey calculated the Reschenthaler 2 map as possessing these values: a partisan bias of 5.9%; an efficiency gap of 6.3%; a mean-median of 2.4%; and a declination of 0.18%. (Caughey Suppl. Report at 24.)

FF251. At the hearing, Dr. Caughey discussed the Plans Score website, which analyzes map plans for partisan fairness and/or gerrymandering.

FF252. Dr. Caughey testified that the website is open to the public, is non-profit and non-partisan, and is completely transparent about the methodology it utilizes to arrive at its predictions. (N.T. at 914-17.)

FF253. In employing the Plans Score website, Dr. Caughey stated that he uploaded the various maps to the website and downloaded the predications, was “projecting what would happen [] if no incumbents were running,” and that, based on the results, districts 1, 7, 10, and 17 identified in the Senate Maps were competitive districts where “there’s substantial uncertainty about where they will land.” *Id.* at 923, 925.

FF254. In his expert report, Dr. Caughey reiterated the findings he obtained with regard to the various plans from using the Plans Score website as follows. First, the Supreme Court’s 2018 Map had a partisan bias of 23%; an efficiency gap of 32%; a mean-median of 13%; a declination of 35%; and a final average of 26%. Second, Governor Wolf’s plan had a partisan bias of 27%; an efficiency gap of 41%; a mean-median of 14%; a declination of 37%; and a final average of 30%. Third, the House Republican Caucus plan/map had a partisan bias of 55%; an efficiency gap of 64%; a mean-median of 36%; a declination of 60%; and a final average of 54%. Fourth, Senate Map 1 had a partisan bias of 16%; an efficiency gap of 26%; a mean-median of 9%; a declination of 27%; and a final average of 20%. Fifth, Senate Map 2 had a partisan bias of 13%; an efficiency gap

of 26%; a mean-median of 7%; a declination of 27%; and a final average of 18%. (Caughey Report at 18.) Ultimately, based on the above numbers, Dr. Caughey opined that Senate Maps 1 and 2 are superior to the other maps that he compared them with.

FF255. On cross-examination, Dr. Caughey admitted that he did not analyze the Carter Petitioners' proposed plan/map prepared by Dr. Rodden or the Gressman Petitioners' proposed plan/map prepared by Dr. DeFord. (N.T. at 956, 965-66.)

FF256. Dr. Caughey conceded that the plans/maps submitted by both the Carter Petitioners and Gressman Petitioners had better results in terms of partisan fairness than the plans/maps that he reviewed and compared in his expert and supplemental expert reports. (N.T. at 966-72.)

FF257. Dr. Caughey conceded that his analytical methods did not account for political geography. (N.T. at 999.)

FF258. Notably, Dr. Caughey could not conclude that HB 2146 was unfair. (N.T. at 992.)

FF259. As noted above, the Senate Democratic Caucus also submitted a Declaration by Shoenberg, detailing the number of splits in Senate Map 1 and Senate Map 2, and an Analysis by Michael Lamb, Pittsburgh City Controller, pertaining to the split of the City of Pittsburgh in both of the proposed Senate Maps.

7. John M. Memmi, Ph.D. (Corman & Ward)

FF260. Senate Republican Legislative Intervenors Corman and Ward submitted the expert report of John M. Memmi, Ph.D., who is a consultant in the field of redistricting and has more than 20 years of experience in the process of drawing redistricting maps.

FF261. Dr. Memmi’s report states that he evaluated HB 2146 in relation to traditional and applicable criteria for compactness, contiguity, population equality, and maintenance of political subdivisions.

FF262. In conducting his evaluation, Dr. Memmi explained that he used generally accepted methodologies in the field of drawing and evaluating congressional redistricting maps and relied on numerous sources of information.

FF263. Dr. Memmi opined, to a reasonable degree of scientific certainty, that House Bill 2146 meets the four traditional criteria for redistricting.

FF264. Dr. Memmi first noted that the two most common ways to measure compactness are the Polsby-Popper and Reock scores.

FF265. Dr. Memmi explained that Polsby-Popper evaluates irregularity in the perimeter of a district, and Reock examines district area. Both scores range from 0 to 1.

FF266. Dr. Memmi stated that “the more compact the district the greater the score.” (*See* John M. Memmi Expert Report, attached to Pre-Hearing Opening Br. of Senate Republican Intervenors Corman and Ward, at 1-2.)

FF267. Dr. Memmi stated that the Polsby-Popper scores of HB 2146 range from 0.19 to 0.49, and the Reock scores range from 0.30 to 0.62, revealing that no district has an extreme, or low, score. *Id.* at 2-3; Memmi Expert Report, Figure 1.

FF268. Dr. Memmi defined “contiguity” using the National Conference of State Legislature definition: “as the condition in which ‘all parts of a district are connected geographically at some point with the rest of the district.’” *Id.* at 2.

FF269. Dr. Memmi opined that HB 2146 is comprised of 17 contiguous districts, as verified by *autoBoundEDGE* redistricting software published by Citygate GIS even despite the non-contiguous municipalities and precincts existing in Pennsylvania. *Id.*

FF270. Dr. Memmi further opined that Pennsylvania must have 12 districts with total populations of 764,865 and 5 districts with total populations of 764,864, for a grand total of 13,002,700 people, and that HB 2146 meets this criterion. *Id.* at 2-3; *see also* Memmi Expert Report, Table 1.

FF271. Dr. Memmi observed that “[c]ounty and municipal governments function more efficiently when their jurisdictions are within one district[,]” and that splits are only necessary when the total population of a district is greater than one district. *Id.* at 3.

FF272. Utilizing a chart showing the split political subdivisions in congressional districts under House Bill 2146, Dr. Memmi opined that House Bill 2146 splits only 0.3% of the of Pennsylvania 16,127 political subdivisions (i.e., counties, municipalities, wards, precincts). *Id.*; *see also* Memmi Expert Report, Figure 2.

8. Thomas L. Brunell (Congressional Intervenors)

FF273. The Congressional Intervenors also presented the expert opinion of Thomas L. Brunell, Ph.D., a Professor of Political Science and program head for the Political Science program at the University of Texas at Dallas.

FF274. In 2021, Dr. Brunell was appointed by the Director of the U.S. Census Bureau to serve a three-year term on the Census Scientific Advisory Committee.

FF275. Dr. Brunell published a book on redistricting and dozens of peer-reviewed articles in the top journals in the fields of redistricting, the Voting Rights Act, elections, and representation. He served as an expert witness in redistricting related litigation often over the last 20 years, testifying in state and federal courts around the country.

FF276. Dr. Brunell was asked by the Congressional Intervenors to evaluate their two proposed congressional maps, Reschenthaler 1 and Reschenthaler 2, using the 2018 Remedial Plan as a benchmark, to examine equal population, compactness, contiguity, preserving communities of interest, and compliance with the VRA.

FF277. Dr. Brunell was also asked to analyze the underlying partisanship of the two maps.

FF278. After concluding that the 2 Reschenthaler maps are correctly populated, contiguous and reasonably compact, Dr. Brunell analyzed the political subdivision splits and concluded that the 2 Congressional Intervenors maps have the same number of county splits as the current map. (Brunell Report at 4-9.)

FF279. In terms of cities and townships, the Reschenthaler maps both split fewer municipalities and have fewer segments than the 2018 Remedial Plan.

FF280. Dr. Brunell examined several measures of partisan advantage including, the efficiency gap, partisan voter index (the “PVI”), and the mean-median vote gap.

FF281. In calculating PVI, Dr. Brunell used the results of the 2016 and 2020 presidential elections as the basis for determining the likely partisanship of each district because they were both high profile elections with well-funded

candidates, both elections were relatively close, and the Republican carried Pennsylvania in 2016 and the Democrat carried the state in 2020. *Id.* at 9.

FF282. Dr. Brunell averaged the vote percentage for the Democrat for each district across these two elections and then subtracted 50% from each one.

FF283. Based on PVI, Dr. Brunell opined that the Reschenthaler 1 and Reschenthaler 2 maps create enough competitive districts such that “the majority of the state’s congressional delegation may be decide by the political tides and the quality of the candidates and campaigns in each election.” *Id.* at 8 (Ex. C).

FF284. According to Dr. Brunell’s PVI analysis, the Reschenthaler 1 and Reschenthaler 2 maps are substantially similar to the competitiveness of the 2018 Remedial Plan, each creating eight republican, five democrat, and 4 toss-up districts, as compared to the 2018 Remedial Plan’s seven-six-five breakdown. *Id.* at 10.

FF285. Regarding the mean-median differences, Dr. Brunell explained that this “method takes the mean (average) vote percentage for one party across all the districts and compares it to the median of the same set of vote percentages.” *Id.*

FF286. For example, Dr. Brunell explained that “[i]f the Democratic average votes percentage is 55 percent and the Democratic median vote percentage in the same election is 50 percent, there is a 5 percent difference that favors Republicans.” *Id.*

FF287. Dr. Brunell explained that this metric is based on logic that if “one party is ‘packed’ into a handful of districts they are at a disadvantage and this will inflate the average vote percentage for that party, while the median of a distribution will be unaffected.” *Id.*

FF288. For his analysis, Dr. Brunell calculated the mean-median differences for the 2018 Remedial Plan and the Reschenthaler 1 and Reschenthaler 2 maps across all of the presidential, senatorial, and gubernatorial elections in Pennsylvania for the last decade.

FF289. Dr. Brunell also added the three other statewide elections from 2020 because “Pennsylvania made two important changes to their elections beginning in 2020—[it] eliminated straight-party voting and instituted no excuse vote-by-mail.” *Id.*

FF290. Dr. Brunell found the Reschenthaler 1 and 2 maps had mean-median averages of 1.86% and 1.89%, respectively, which were indicative of a sufficiently competitive map. *Id.* at 9 (Table 10).

9. Sarah Andre (Khalif Ali et al.)

FF291. Khalif Ali submitted the expert report of Sarah Andre, who works as a Redistricting Demography/Mapping Specialist for Common Cause and is responsible for conducting spatial and demographic analyses of local, state, and federal district boundaries and providing support to Common Cause state offices in the form of district map analysis trainings. (Sarah Andre Report (Andre Report) at 1.)

FF292. Ms. Andre has a Master of Public Policy from the UCLA Luskin School of Public Affairs and a Bachelor of Arts in Human Development from California State University, Long Beach. *Id.*

FF293. Ms. Andre was asked by Khalif Ali et al. to use the proposed congressional plan that Governor Wolf publicly released on January 15, 2022, as a starting point and to adjust for “underlying Census data to count incarcerated

individuals in their homes rather than their cells,” and “to improve a small number of areas where the Governor’s Plan, as adjusted for prisoners’ home addresses, could more effectively preserve communities of interest.” *Id.*

FF294. She was also asked to ensure that the Ali Plan complied with the traditional neutral redistricting criteria, specifically equal population, contiguity, compactness, and minimizing splits of political subdivisions. *Id.*

FF295. Ms. Andre did not consider any partisan data or incumbent or challenger home addresses in her analysis. *Id.*

FF296. Ms. Andre used the adjusted Data Set # 2 (with prisoner reallocation) adopted and used by the Pennsylvania Legislative Reapportionment Commission in drafting legislative plans. *Id.*

FF297. Ms. Andre further explained that she “identified and attempted to improve a small number of areas where the Governor’s Plan did not sufficiently account for protecting communities of interest, and specifically, she focused on the Pittsburgh area (Districts 16 and 17), the Capital Region (Districts 10 and 11), and minor adjustments in Philadelphia, as well as other areas, relying on publicly available testimony and public comment from a variety of sources. (Andre Report at 4-13.)

FF298. In Ms. Andre’s opinion, the Governor’s Plan and the Ali Plan are “as nearly as equal in population as practicable,” as they only have a one-person variance, with 4 districts with 764,864 residents, and 8 with 764,864 residents. *Id.* at 13.

FF299. Ms. Andre opines that the Governor’s Plan and the Ali Plan are contiguous, in that “[a]ll districts are composed exclusively of contiguous territory and no district is contiguous only by a single point.” *Id.* at 13-14.

FF300. Ms. Andre opines that the Governor's Plan and the Ali Plan are compact on the widely used measures of compactness, the Reock scale and Popper-Polsby test, and are comparable to the 2018 Remedial Plan.

FF301. Noting that "[t]he closer the number is to 1, the more compact the plan is," Ms. Andre observed that the Ali Plan has a Reock score of 0.4070 and a Polsby-Popper score of 0.3418, while the current plan has a Reock score of 0.4278 and a Polsby-Popper score of 0.3675, and the Governor's Plan has a Reock score of 0.4012 and a Polsby-Popper of 0.369. (Andre Report at 14.)

FF302. In comparing the plans, Ms. Andre opined that the Ali Plan compares favorably to both the Governor's Plan and the 2018 Remedial Plan. *Id.*

FF303. Ms. Andre opined that the Governor's Plan and the Ali Plan are comparable in minimizing splits. *Id.*

FF304. Ms. Andre testified that the Governor's Plan has 19 county splits and 178 municipality splits, whereas the Ali Plan has 19 split and the 177 municipality splits. *Id.*

FF305. Thus, according to Ms. Andre, the Ali Plan preserves population equality among congressional districts, is contiguous, compact, and aimed to reduce county, municipal, and voting precinct splits. *Id.* at 13-15.

FF306. Ms. Andre testified that neither the Governor's Plan nor the Ali Plan sets out to avoid pitting incumbents against one another, as both plans have two pairs of districts that group together incumbents. *Id.* at 14-15.

10. Sean Trende (Voters of the Commonwealth)

FF307. Sean Trende authored a report that analyzed the map submitted by the Voters of PA *Amici*.

FF308. Mr. Trende is currently a doctoral candidate in political science at Ohio State University, working on a dissertation that focuses on applications of spatial statistics to political questions, and he has obtained a master's degree in applied statistics from Ohio State University and a law degree from Duke University.

FF309. After practicing law for 8 years, Mr. Trende joined RealClearPolitics in January of 2009 and is presently a Senior Elections Analyst.

FF310. Mr. Trende has provided expert reports in numerous cases throughout the country concerning election laws, voting rights, and redistricting.

FF311. In his report, Mr. Trende states that he utilized a statistical and graphics programming language called "R" and made a block assignment file to match the shapefile of the blocks to their respective districts to ultimately create a shapefile of the districts in the map for the Voters of PA Plan.

FF312. Mr. Trende opined that the proposed map consists of 17 contiguous districts, which vary in population by no more than one person.

FF313. In terms of the compactness of the districts, Mr. Trende stated he employed three commonly used metrics: Reock, Polsby-Popper and Schwartzberg. While noting "the importance of looking at multiple standards of compactness," Mr. Trende explained that "[t]he Reock score looks at the ratio of the area of the district to the area of the smallest circle that would enclose the district (also known as a 'minimum bounding circle')" and "[a] 'perfect' Reock score is 1, while a zero reflects a theoretical perfectly non-compact district." (Trende Report at 10.)

FF314. Mr. Trende explained that "[t]he Polsby-Popper score looks at the ratio of the area of a district to the area of a circle that has the same perimeter as

the district,” “[a] ‘perfect’ Polsby-Popper score is 1,” and “a theoretical perfectly non-compact district would score a zero.” *Id.*

FF315. Mr. Trende stated that “[t]he Schwartzberg score takes the perimeter of the district and compares it to the perimeter (circumference) of a circle that has the same area as the district” and that “the scores are . . . scaled from 0 to 1, with 1 representing a perfectly compact district.” *Id.* at 10-11.

FF316. After providing the Reock, Polsby-Popper and Schwartzberg scores for each individual district in the proposed map, Mr. Trende noted that “[o]ne drawback of these measures is that there is no clear definition of when a district becomes non-compact, and scores for districts that most lay observers would consider quite compact can nevertheless deviate significantly from a ‘perfect’ district.” *Id.* at 11.

FF317. Mr. Trende calculated a comparison of the proposed map with the Supreme Court’s 2018 Map (*i.e.*, the existing map) and arrived at the following figures: (1) the mean, median, and minimum Reock scores for the proposed map were 0.4419%, 0.4335%, and 0.3432%, respectively, and 0.4280%, 0.4101%, and 0.3243% for the 2018 Map, respectively; (2) the mean, median, and minimum Polsby-Popper scores for the proposed map were 0.3951%, 0.3791%, and 0.2289%, respectively, and 0.3356%, 0.3244%, and 0.1808% for the 2018 Map, respectively; and (3) the mean, median, and minimum Schwartzberg scores for the proposed map were 0.6256%, 0.6157%, and 0.4784%, respectively, and 0.5754%, 0.5695%, and 0.4252% for the 2018 Map, respectively.

FF318. Mr. Trende analyzed the splits in the proposed map, determining that the proposed “map splits only 15 counties between the 17 districts” and does so “in a manner consistent with the way counties have historically been

split in the Commonwealth,” especially considering that “[t]here are three counties in Pennsylvania that must be split due to their population: Philadelphia, Montgomery and Allegheny” and “[o]utside of these mandatory splits, the splits in the [p]roposed [m]ap impact just 25.1% of the population.” *Id.* at 12-13, 15.

FF319. According to Mr. Trende, the proposed map “also splits relatively few municipal divisions,” a total of 17, and that, notably, “the only large city the [p]roposed [m]ap splits is Philadelphia (which must be split due to its population),” while “[l]arge cities such as Pittsburgh, Allentown, Erie, and Reading are kept intact.” *Id.* at 15-16.

FF320. Concerning the VRA, Mr. Trende “does not purport to conduct a racially polarized voting analysis, and thus does not make claims as to whether a district is required by the VRA,” but notes “that, as with the current plan, there is at least one district that is consistent with the VRA.” *Id.* at 17.

FF321. In this regard, Mr. Trende states that “[b]lack voters comprise a majority of the Voting Age Population (“VAP”) in Congressional District 3” and, further, that “Black voters would be well-positioned to elect the candidate of their choice in Congressional District 2, where minority groups together comprise almost 65% of the VAP, but where Black voters comprise a plurality of the non-white VAP.” *Id.*

FF322. Mr. Trende testified that incumbents are paired together in two districts. *Id.* at 16-17.

FF323. On the issue of partisanship, Mr. Trende provided the mean-median and efficiency gap scores for both proposed map and the 2018 Map for three different periods/election races, “Trump-Biden only,” the “2020 Elections,” and the “2016-2020 Elections.” *Id.* at 21.

FF324. Mr. Trende calculated the efficiency gap for the proposed map during these periods/election races as 0.036%, 0.030%, and 0.056%, respectively, and -0.010%, -0.016%, and -0.041% for the 2018 Map, respectively.

FF325. Mr. Trende also calculated the mean-median for the proposed map during these periods/election races as 0.030%, 0.020%, and 0.022%, respectively, and 0.007%, -0.004%, and 0.002% for the 2018 Map, respectively.

FF326. Mr. Trende provided figures for the Governor's map/plan and concluded that "the Governor's Map is less compact across virtually every measure than the [p]roposed [m]ap and is less compact than the existing map in multiple instances." *Id.* at 22.

11. Justin Villere (Draw the Lines PA)

FF327. The Draw the Lines *Amici* submitted a statement from Justin Villere, Managing Director of Draw the Lines PA, to support what the amici refer to as the "Pennsylvania Citizens' Map" or the "Citizens' Map."

FF328. In the words of Mr. Villere,

The Citizens' Map, in effect, represents the values of everyday Pennsylvania mappers more than any other map that has been published or considered. Further, by using direct hands-on public involvement to draw the original map, publishing the map, asking for feedback, and then revising it, Draw the Lines has modeled a transparent and accountable public process. The Citizens' Map is not a perfect map but it represents what our thousands of mappers and a clear majority of public commenters would want to see in their congressional maps.

(Villere Report at 2.)

FF329. As explained by Mr. Villere, the Citizens' Map contains 17 districts that are contiguous and deviate in population by no more than one person.

FF330. In terms of compactness scores, Mr. Villere states that the map has a Reock score of 0.451, a Polsby-Popper score of 0.376, a Schwartzberg score of 1.67, a Pop-Polygon score of 0.77, and Convex Hull score of 0.81. *Id.* at 4.

FF331. Mr. Villere notes that “limiting jurisdictional splits was not a top-3 priority for our mappers,” but nonetheless explains that the Citizens’ Map “splits 14 counties a total of 16 times, equal to the 14/16 split by the 2018 map” and, also, “splits 16 municipalities,” which is “an improvement on the 19 splits in the 2018 map.” *Id.* at 4.

FF332. According to Mr. Villere, “[s]ome municipal splits are unavoidable due to size (like Philadelphia), or due to the zero[-]population deviation requirement. Other splits (like Pittsburgh) were the result of trade-offs to maximize other values (like communities of interest, compactness, and political competitiveness).” *Id.*

FF333. Mr. Villere states that, in the Citizens’ Map, “[t]o adhere to the Voting Rights Act, Districts 2 and 3 are majority-minority districts. District 2 is a coalition district (29% Black, 22% Hispanic, 10% Asian), while District 3 is majority Black (55%).” *Id.*

FF334. On the issue of competitive districts, Mr. Villere submits that “[t]he Citizens’ Map, using 2016-2020 composite election data, would yield five strongly Democratic and six strongly Republican districts” and “[s]ix districts would produce competitive elections (major party candidates within 10% of each other).” *Id.*

FF335. Mr. Villere adds that using PlansScore, which evaluates maps for partisan fairness, the Citizens’ Map, when not factoring in the status of

incumbents, “has an efficiency gap of 3.5% in favor of Republicans,” which “means Republicans would win an extra 3.5% of 17 seats, or an extra half-seat.

FF336. According to Mr. Villere, when factoring incumbency, there is a 0.2% gap in favor of Republicans.” *Id.* at 5.

FF337. Mr. Villere provides a detailed description of the geographical contours for each district and brief statements as to why the composed districts preserve the relevant community interests.

FF338. The Court finds that all experts presented were qualified to offer expert opinions on the subjects of their testimony.

FF339. Citizen Voters *Amici* did not submit an expert report.

D. Evidentiary Objections

During trial, the Governor objected to the admission of Dr. Memmi’s and Dr. Brunell’s reports on the grounds that the reports are inadmissible hearsay, and allowing the reports into evidence would bestow an unfair advantage on the parties proffering them. The Governor also argued that the reports submitted by the *Amici*’s experts should be weighed in a manner that appropriately reflects their lack of exposure to cross-examination. The Governor readily acknowledged the Court’s rationale for allowing those *Amicus* Participants to submit expert reports and that the Court was attempting to balance consideration of those Participants’ views and proposed maps, on the one hand, with the need to ensure that the evidentiary hearing, in which the *Amicus* Participants were not permitted to participate, was manageable on the other hand. It is also important to note that the Governor’s expert report included analysis of all of the *Amicus* Participants’ reports based on a request by the Governor to do so. The Governor nonetheless argued that the *Amicus* Participants’

expert reports were not subject to the kind of rigorous adversarial testing applied to the reports submitted by the experts who testified at the hearing. Therefore, he requested that the Court's assessment of the *Amicus* Participants' reports take account of that difference.

The Court submits that it did not abuse its discretion in overruling the objection. Due to the expedited nature of the proceedings, the Parties were permitted to present one to two plans and corresponding expert reports but were only permitted to have one expert testify at the trial. The *Amicus* Participants were permitted to present one plan and one expert report, and were not permitted to participate in trial. All Parties were given the opportunity to file counter expert reports to respond to any of the expert reports of the other Parties and the *Amicus* Participants. Because the expert reports submitted by the *Amicus* Participants were subject to adversarial testing, and the Parties and the *Amicus* Participants all had the opportunity to point out to the Court the shortcomings of the other expert reports, everyone was in equal circumstances. It is also noteworthy to add that none of the Parties objected to the admission of the Declarations moved into evidence by the Senate Democratic Caucus Intervenors or the Statement by Michael Lamb on the basis of hearsay. In fact, a number of parties and applicants during the intervenor hearing stated that the Court could just request maps and reports and decide without a hearing. Hence, the Court believes it was correct to overrule the objection.

Moreover, in its January 26, 2022 order denying Khalif Ali's appeal, the Supreme Court seemingly countenanced this Court's strategy of limiting the *Amicus* Participants' participation in this matter to the submission of an expert report and plan in writing. Doubtless, if the Supreme Court had not approved, it would

have clarified that before the Court and Parties expended time and resources by proceeding in this manner.

The Governor also objected to admission of Dr. Memmi's and Dr. Brunell's reports based on fairness. It argued that Dr. Memmi's report addressed the same map as does the report of the Republican Legislative Intervenors' testifying witness, Dr. Barber. And, although the Congressional Intervenors submitted two maps, they had Dr. Brunell address one map, while their testifying expert, Dr. Naughton, addressed the other. Both experts' reports were proffered in support of both maps. The other Parties at the hearing all offered expert reports by one witness, namely, the witness who testified at the hearing and was subject to cross-examination. The Governor argued that to safeguard the truth-seeking process and place the parties on a level playing field, the expert reports of Dr. Memmi and Dr. Brunell should not be admitted into evidence.

The Court further points out that the Speaker and Majority Leader of the Pennsylvania House of Representative and the President Pro Tempore and Majority Leader of the Pennsylvania voluntarily offered to join together as one party in a good faith attempt to streamline the proceedings and avoid the duplication of efforts at trial. The House Democratic Caucus Intervenors and Senate Democratic Caucus Intervenors did not join as intervenors and were permitted to file 1-2 reports each. By allowing Democratic House and Senate Intervenors the opportunity to provide two reports and maps each just because they did not join as intervenors, but precluding Republican House and Senate Intervenors from doing so because they joined as intervenors would be prejudicial. Recognizing each would have been entitled to submit up to two plans and two expert reports had they not joined together, the Court did not perceive any unfair advantage to the Governor or any other party.

The Court also did not believe it was fair to penalize those parties for making an effort to accelerate the proceedings in light of the exigent timeline. Moreover, as the Court explained to counsel, the object of soliciting expert reports and proposed plans from the parties, intervenors and *amici* was to educate the Court and provide an array of options for the Court. The Court submits that it did not abuse its discretion in overruling the objection.

Exhibits introduced in trial and attached to briefs were admitted into evidence. All exhibits are part of the record in this matter.

E. Parties' and Amicus Participants' Arguments

The Court will now summarize the parties' and *Amici* Participants' arguments.

1. Carter Petitioners

The Carter Petitioners first assert that their proposed plan meets or exceeds the 2018 Remedial Plan's performance on the traditional redistricting criteria that our Supreme Court set forth in *LWV II*, and additionally reflects the partisan preferences of Pennsylvania voters. (Carter Pet'rs' Br. in Support, at 1.) The Carter Petitioners point out that their Plan "implements a least-change approach," in that they used the "superior or comparable" Supreme Court 2018 Remedial Plan as a starting point, which they claim is "a common strategy courts deploy when, as here, the existing map is rendered obsolete by population changes." *Id.* at 4-5. With respect to taking a least-change approach, the Carter Petitioners assert that their Plan "preserves district cores, creates continuity in representation, and respects communities of interest[,]" and satisfies the *LWV II* criteria and other redistricting principles previously relied upon by our Supreme Court. *Id.* at 4.

Specifically, the Carter Petitioners assert that they “were able to preserve the core of the 2018 Remedial Plan’s districts and create continuity for the overwhelming majority of Pennsylvania residents.” *Id.* at 6 (citing *Karcher v. Daggett*, 462 U.S. 725, 740 (1983), and *Reynolds v. Sims*, 377 U.S. 533, 578-79 (1964)). They point out that their Plan allows 87% of Pennsylvania’s population to remain in their respect districts under the 2018 Remedial Plan. *Id.*

In terms of the traditional redistricting criteria, the Carter Petitioners assert that their Plan meets the equal population requirement of *LWV II*, because it “includes 4 districts with the ideal population and 13 districts with a deviation of plus or minus one person[,]” which “level of population deviation readily satisfies constitutional requirements.” *Id.* at 7. The Carter Petitioners next contend that their Plan is similar in compactness to the 2018 Remedial Plan. *Id.* In this regard, they point out that they have complied with *LWV II* by providing the Plan’s Reock, Schwartzberg, Polsby-Popper, Population Polygon, and Area/Convex Hull measures of compactness for each district. *Id.* at 8. They further point out that their Plan’s Reock score matches the 2018 Remedial Plan’s score, and that the Plan nearly matches (each by 0.01) the 2018 Remedial Plan’s scores on the other measures. *Id.* The Carter Petitioners explain that some decreases in compactness measures was caused by their attempt to maintain population equality in Districts 4 and 5. Moreover, they explain that population deviations in the counties comprising those districts (Bucks and Delaware Counties) required them “to reach outside of those subdivisions for additional population.” *Id.* at 9. The Carter Petitioners also assert that their Plan meets the contiguity requirement. *Id.* Finally, the Carter Petitioners argue that their Plan “maintains and builds upon the 2018 Remedial Plan’s respect

for the integrity of political subdivisions[,]” in that it “has the same or fewer county, county subdivision, and vote tabulation district splits.” *Id.*

In terms of other redistricting principles, the Carter Petitioners first claim that their Plan preserves minority voting rights as reflected in the 2018 Remedial Plan. The Carter Petitioners maintain that their Plan complies with *Mellow* and the VRA, because “[i]t closely follows the boundaries of the 2018 Remedial Plan with regard to those areas of the state with sizeable minority populations, thus preserving [the 2018] minority opportunity districts” *Id.* at 10-11. They also point out that their expert, Dr. Rodden, did not take racial data into account when making adjustments for population changes. *Id.* at 11. The Carter Petitioners next assert that their Plan “creates districts that represent the natural and well-defined communities of interest” and, where changes were required, “follows natural and political subdivision boundaries with a focus on keeping communities together.” *Id.* at 12 (noting District 7 needed more population, so Carbon County added to unify the Allentown-Bethlehem-Easton metropolitan area consisting of entirety of Northampton, Lehigh, and Carbon Counties; and new District 15 that avoids split of Centre County that previously separated State College from some suburbs, resulting from loss of District 12). Finally, the Carter Petitioners assert that their Plan reflects Pennsylvania voters’ partisan preferences because it essentially matches the 2018 Remedial Plan, while also containing “truly competitive districts.” *Id.* at 13-14.

In their response brief, the Carter Petitioners add that the Court should not select a plan that overly favors one party or another and/or that splits communities of interest, including the plans of the House and Senate Republican Intervenors and the Republican Congressional Intervenors, and *Amici* Participants

Voters of the Commonwealth and Citizen Voters. (Resp. Br. in Support of Carter Plan at 6-11.) Last, the Carter Petitioners contend that this Court owes no deference to any of the submitted plans, including that of the House and Senate Republican Intervenors. *Id.* at 12-17.

2. Gressman Petitioners

In their supporting brief, the Gressman Petitioners, who characterize themselves “[a]s the only nonpartisan party before this Court,” first explain the guiding legal principles that this Court must consider in reviewing the various plans submitted to the Court for consideration, which include the neutral criteria of *LWV II*, article II, section 16 of the Pennsylvania Constitution, and the VRA. (Br. in Support of Gressman Pet’rs’ Plan at 2, 12-14.) The Gressman Petitioners also note that there are other permissible factors the Court may consider, such as metrics, which include a plan’s maximum population deviation and compactness measures. *Id.* at 14. The Gressman Petitioners assert that their proposed Plan is superior because it “achieves or approaches the best metrics that can be attained on all of Pennsylvania’s legal requirements, while appropriately considering the additional permissible redistricting factors.” *Id.*

Specifically, the Gressman Petitioners assert that their Plan, which has 5 districts with 764,864 residents and 12 districts with 764,865 residents, has the best population equality compared to the other proposed plans. *Id.* at 15-16. The Gressman Petitioners also claim that their Plan outperforms the 2018 Remedial Plan, the House Republican Intervenors’ Plan, and the Governor’s Plan in terms of splitting political subdivisions, as it splits only 15 counties, 19 municipalities, 1 city, 3 boroughs, 15 townships, and 15 wards. *Id.* at 17-24. The Gressman Petitioners also claim their Plan is contiguous in accordance with *LWV II*. *Id.* at 24. The

Gressman Petitioners further assert that their Plan is compact, and they focus on their Plan's mean scores for Polsby-Popper (0.33), Reock (0.40), and Convex Hull (0.80), as well as the Plan's cut edges score (5,546). *Id.* at 25-29. In doing so, the Gressman Petitioners contend that their Plan substantially outperforms the House Republican Intervenors' Plan on compactness, the 2018 Remedial Plan on three of the four measure, and is equal to or comparable to the Governor's Plan. *Id.* at 27.

The Gressman Petitioners further assert that their plan exhibits partisan fairness under the Free and Equal Elections Clause, which is measured by a number of metrics including direct majority responsiveness (resulting in larger vote share being rewarded with larger seat share), the efficiency gap (achieving a gap near zero for each election analyzed), and the mean-median score (scoring very close to zero). *Id.* at 29-40. The Gressman Petitioners also argue that their Plan complies with the Fourteenth Amendment to the United States Constitution and section 2 of the VRA, because it contains three districts in the Philadelphia area in which minority-group members constitute 51%, 52%, and 57% of the voting age population. (Br. in Support of Gressman Pet'rs' Plan at 40-46.) Moreover, the Gressman Petitioners point out, their Plan would, for the first time, create a Latino majority-minority district. *Id.* at 43-46. The Gressman Petitioners also claim their Plan is superior based upon on other factors, such as pairing zero incumbents in the same districts and maintaining respect for communities of interest, as recognized in *Mellow*. *Id.* at 47-48; *see also id.* at 49-63 (demonstrating preserved communities of interest). For all of the above reasons, the Gressman Petitioners urge this Court to adopt their proposed Plan.

In their responsive brief, the Gressman Petitioners largely repeat the above arguments, but add that they take no position with respect to making changes to the 2022 Primary Election calendar. (Gressman Pet’rs’ Resp. Br. at 24.)

3. Governor Wolf Intervenor

In his Brief in Support, Governor Wolf Intervenor asserts that he “is the only party to this litigation who has a constituency of, and thus represents the interests of, *all* Pennsylvania voters.” (Governor Wolf Intervenor Br. in Support of Plan at 1.) Acknowledging that the Free and Equal Elections Clause of the Pennsylvania Constitution (article I, section 5), the principles announced in the Supreme Court’s *LWV II* decision, the Supreme Court’s and this Court’s prior decisions in *Mellow*, and Article I, Section 2 of the U.S. Constitution (one person, one vote) govern this Court’s analysis, Governor Wolf argues that his Plan complies with all of the above requirements. (Governor Wolf Intervenor Br. in Support of Plan at 7-11.)

Specifically, Governor Wolf asserts that his Plan contains districts that are essentially equal in population, as “no district has more than 764,865 persons and no district has fewer than 764,864 persons” *Id.* at 18. Further, he claims that the compactness of his Plan is shown by its Polsby-Popper (0.381), Reock (0.431), and voting district cut edges (5185) scores, which demonstrate that his Plan is more compact than other proposed plans, such as HB 2146. *Id.* at 19-20. Governor Wolf additionally asserts that his plan is contiguous, similar to the 2018 Remedial Plan. *Id.* at 20. Regarding splits, Governor Wolf points out this his plan splits only 16 counties, which is comparable to the 2018 Remedial Plan’s 13 split counties and the 19 split counties in *Mellow*. *Id.* He claims that the splits were

necessary in both Philadelphia and Allegheny Counties because their “populations [are] too large to subsume in a single congressional district.” *Id.* Governor Wolf further asserts that his Plan is superior because it “carefully considered decisions to ensure that cohesive communities of interest are preserved” based on feedback he received “via the Governor’s Public Comment Portal[,]” “testimony received in listening sessions held by the Governor’s Redistricting Advisory Council[,]” and the nearly 500 submissions to the Redistricting Public Comment Portal. *Id.* at 20-21. As examples, Governor Wolf points to numerous comments received requesting that the City of Reading and Centre County be kept whole, which requests the Plan honored. *Id.* at 22.

Governor Wolf next contends that his plan is superior because it does not entrench a structural partisan advantage and promotes accountability and responsiveness to voters, which is shown by his expert Dr. Duchin’s overlay method analysis. *Id.* Governor Wolf asserts that Dr. Duchin’s analysis shows that his Plan results in a “level ‘partisan playing field,’ while the House Map ‘entrenches a Republican advantage.’” *Id.* at 24-25. Therefore, according to Governor Wolf, his Plan provides voters of this Commonwealth with an equally effective power to select the representatives of their choice. *Id.* at 25. Governor Wolf further contends that Dr. Duchin’s ensemble analysis of randomly drawn plans compared to his Plan, as well as her use of the efficiency gap (+0.10), Eguia artificial partisan advantage (-0.05), the mean-median score (-0.01), and the partisan bias score (-0.018) as measurements, confirms that Governor Wolf’s Plan does not create any systematic partisan advantage, but rather “creates a level electoral playing field and promotes accountability and responsiveness to voters” and “districts [that] are responsive to Pennsylvania political trends and prevailing voter preference.” *Id.* at 26-27. Overall,

the Governor contends, using both methods reflects that his Plan: “reflects the Majority Rule Principle, as the political party winning the majority of votes statewide is predicted, as a general matter, to win a majority of congressional seats”; “adheres to the Close-Votes-Close-Seats Principle, meaning an electoral climate with a roughly 50-50 split in partisan preference should produce a roughly 50-50 representational split”; and “preserves ‘swing’ districts that can be won by members of either major political party under recent voting patterns.” *Id.* at 27. Accordingly, Governor Wolf requests that this Court choose his proposed Plan, as it comports with redistricting principles of *LWV II*. *Id.* at 28.

In his responsive brief, Governor Wolf repeats his arguments, summarized above, and additionally observes that this case is more similar to *Mellow* than *LWV II*, and, as such, “goes beyond simply asking whether each plan satisfies the requirements of” *LWV II*. (Governor Wolf’s Resp. Br. at 3.) Further, Governor Wolf responds to the Senate and House Republican Legislative Intervenors’ argument that HB 2146 is entitled to special deference, asserting that no special deference is due. *Id.* at 6-11.

4. Republican Legislative Intervenors (Senate and House Leaders)

a. Senate Republican Intervenors (Corman & Ward)

Senate Republican Intervenors Corman and Ward acknowledge in their opening brief that the traditional, constitutionally-derived redistricting principles set forth in *LWV II* govern this matter. (Pre-hearing Opening Br. of Senate Republican Intervenors at 1-5.) They also contend that additional principles and factors must be considered, including the VRA (citing *Gingles*, 478 U.S. at 71), the Fourteenth Amendment to the United States Constitution (citing *Shaw v. Reno*, 509 U.S. 630,

641 (1993)), and other political factors, such as protection of incumbents and the maintenance of political balance that existed after the prior reapportionment. (Pre-hearing Opening Br. of Senate Republican Intervenors at 5-8.) Senate Republican Intervenors further point out that, while the *LWV II* Court stated, in *dicta*, that subordinate factors utilized as part of creating a redistricting plan “may not ‘unfairly dilute the power of a particular group’s vote for a . . . representative[,]’” “[i]t did not attempt to define the contours of ‘unfair’ vote[]dilution.” (Pre-hearing Opening Br. of Senate Republican Intervenors at 8.) Senate Republican Intervenors then recognize the principle that a court is permitted to intervene when the General Assembly and Governor reach an impasse in enacting a restricting scheme. *Id.* at 10. However, given that “there is no doubt that redistricting remains a fundamentally legislative act[,]” Senate Republican Intervenors contend that their proposed Plan, *i.e.*, HB 2146, is “entitled to deference and special weight as a reflection of the legislative process (given that the House has passed it and it is making its way through the Senate) and the will of the people’s elected representatives.” *Id.* at 10-12 (citing numerous federal and U.S. Supreme Court cases). On this basis, Senate Republican Intervenors request that this Court choose their proposed Plan, HB 2146, “in order to honor the General Assembly’s constitutional prerogative to engage in redistricting.” *Id.* at 12.

b. House Republican Intervenors (Cutler & Benninghoff)

House Republican Intervenors Cutler and Benninghoff, who have submitted the same plan as the Senate Republican Intervenors, assert that the traditional redistricting principles of *LWV II* should guide this Court in selecting an appropriate congressional districting plan. (House Republican Intervenors

Corrected Opening Br. at 5.) The House Republican Intervenors contend that HB 2146 was passed by the House following “the most open and transparent Congressional redistricting process in recent history” and “is nearly identical to the map drawn by a citizen and good government advocate[,]” Amanda Holt. *Id.* The House Republican Intervenors point out that Ms. Holt’s proposal was selected because “it was drawn without political influence, met constitutional standards, limited the splits of townships and other municipalities, and offered districts that were company and contiguous.” *Id.* at 6. They note that the proposal was amended to its current form, and subsequently amended based upon 399 comments from citizens. *Id.* at 6-7.

Acknowledging that congressional redistricting is unquestionably the prerogative of the General Assembly, the House Republican Intervenors observe that nearly all impasse cases generally involve a disagreement between the legislature and the governor on an appropriate redistricting plan. *Id.* at 10. However, the House Republican Intervenors contend that “impasse does not mean that the General Assembly’s plan—despite the failure to the Governor to sign it into law—is entitled to no special consideration when the judiciary must take up the unwelcome obligation of redistricting the Commonwealth.” *Id.* Stated otherwise, the House Republican Intervenors urge this Court to give HB 2146 special consideration, notwithstanding the Governor’s veto thereof, “because it best reflects state policies and the people’s preferences.” *Id.* at 11.

Moreover, the House Republican Intervenors contend that HB 2146 closely adheres to, and does exceptionally well on, traditional redistricting principles and was drawn without any partisan data. *Id.* at 12-13. In this regard, the House Republican Intervenors highlight that HB 2146 has a population deviation of plus or

minus one, which is the best that can be achieved, and it is also contiguous and compact. *Id.* at 13. Specifically, HB 2146 achieved a 0.324 Polsby-Popper score, which is similar to the 2018 Remedial Plan’s 0.327 and, thus, comparable to that plan in terms of compactness. *Id.* at 13-14. The House Republican Intervenors further highlight that HB 2146 only splits 15 counties with 18 total splits, which is also very similar to the 2018 Remedial Plan that split 14 counties 19 times. *Id.* at 14. Further, HB 2146 splits only 16 municipalities with a total of only 18 splits, while the 2018 Remedial Plan split 18 municipalities a total of 19 times. *Id.* The House Republican Intervenors additionally highlight that HB 2146 creates two districts with a minority voting age population greater than 50%, including one with a black voting age population over 50%. *Id.* at 15.

The House Republican Intervenors next assert that, although not required by the Constitution, HB 2146 “is demonstrably fair under numerous partisan fairness measures.” *Id.* Specifically, the House Republican Intervenors contend that HB 2146’s partisan fairness was established via its expert’s, Dr. Barber’s, comparison of the bill to a set of simulated maps following only the traditional criteria, which not only accounts for partisan fairness but also the geographic distribution of voters across the Commonwealth. *Id.* at 15-16. The House Republican Intervenors further highlight the results of Dr. Barber’s analysis, which “demonstrate that the House Plan follows the[] traditional redistricting criteria similar to that of the simulated plans” and “that, if anything, the House Plan is more favorable to Democrats.” *Id.* at 16. In particular, they point out that HB 2146 “is predicted to result in 9 Democratic-leaning seats and 8 Republican-leaning seats using an index of statewide elections from 2012 to 2020”; “[t]he most common outcome, however, is 9 Republican-leaning seats and 8 Democratic-leaning seats.”

Id. at 16-17. This, the House Republican Intervenors contend, shows how HB 2146 “is fair and can flip seats depending on different election outcomes.” *Id.* at 17.

The House Republican Intervenors further highlight HB 2146’s mean-mean score of -0.015, which is close to zero, its efficiency gap of -0.02, which is also close to zero, and its uniform string analysis, all of which revealed that HB 2146 is fair. *Id.* at 17-18. The House Republicans also point out that HB 2146 creates five competitive districts, four of which are Democratic-leaning, and, in using race-conscious simulations, a map with 9 Democratic-leaning seats is the most common outcome. *Id.* at 20-21. Finally, the House Republican Intervenors suggest that this Court should reject any maps that subordinate traditional redistricting criteria in favor of a map that seeks proportional representation. *Id.* at 21-24. For the above reasons, the House Republican Intervenors request that this Court adopt HB 2146.

5. Congressional Intervenors

Congressional Intervenors argue that this Court’s decision in this matter is guided by the same constitutional requirements as the General Assembly. (Brief of Congressional Intervenors at 9.) In particular, Congressional Intervenors contend that their two plans, Reschenthaler 1 or Reschenthaler 2, submitted to this Court for consideration, both meet the U.S. Constitution’s one person, one vote requirement, comply with the VRA, and comport with the Free and Equal Elections Clause of the Pennsylvania Constitution. *Id.*

Citing *Mellow*, Congressional Intervenors first assert that both of their plans have a maximum total deviation of one voter, and thus, they meet the equal population requirement. *Id.* at 10. Further, Congressional Intervenors’ plans both comply with the VRA “because sufficiently polarized voting does not exist and, thus,

the VRA is simply not implicated.” *Id.* at 12. Citing the three *Gingles* factors, which are threshold conditions for demonstrating vote dilution under section 2 of the VRA, Congressional Intervenors explain that only “[i]f the *Gingles* factors are met[is] there [] good reason to believe that Section 2 of the VRA mandates the creation of a minority-majority district, but, as succinctly put by the [United States] Supreme Court, ‘if not, then not.’” (Br. of Congressional Intervenors at 12-13.) They further explain that if one of the factors, such as white bloc voting, cannot be established, “then the requisite good reason for drawing a minority-majority district does not exist.” *Id.* at 13. As applied to their two plans, Congressional Intervenors contend that the data analyzed by their expert, Dr. Brunell, does not indicate racially polarized voting, which would necessitate the creation of a minority-majority district. *Id.* at 14-15. Therefore, Congressional Intervenors assert that in the absence of the third *Gingles* factors showing racially polarized voting that would preclude a minority from electing the candidate of their choice, the VRA is not implicated. *Id.* at 15-16.

Congressional Intervenors next contend that their plans satisfy the traditional redistricting criteria of *LWV II*. *Id.* at 17. Specifically, the plans amply satisfy the compactness requirements, with Reschenthaler 1’s Reock score of 0.435 and Polsby-Popper score of 0.363, which exceeds the 2018 Remedial Plan’s score by 0.28 units. *Id.* at 19. Further, Reschenthaler 2’s yields similar scores, with a Reock score of 0.424, and a Polsby-Popper score of 0.352, both of which are better than the 2018 Remedial Plan. *Id.* Congressional Intervenors also contend that their plans are contiguous. *Id.* at 19-20. Further, according to Congressional Intervenors, their plans maintain the integrity of municipalities because they only split 13 counties into fewer than 29 segments and 16 municipal splits into 33 segments,

compared to the 2018 Remedial Plan, which contains 13 split counties into 30 segments and 19 municipal splits into 39 segments. *Id.* at 21.

Congressional Intervenors focus, at length, on how their plans properly account for communities of interest under the Free and Equal Elections Clause. While acknowledging this concept “often proves difficult to measure,” Congressional Intervenors contend that “perhaps most relevant with respect to the Court’s compactness and political subdivision split analysis because a fair map will, at times, sacrifice mathematical exactitude to maintain contiguity of communities that share similar interests.” *Id.* at 23-24. According to Congressional Intervenors, the term encompasses “school districts, religious communities, ethnic communities, geographic communities which share common bonds due to locations of rivers, mountains and highways,” “a community’s circulation arteries, its common news media . . . , its organization and cultural ties, its common economic base, and the relationship among schools of higher education as well as others.” *Id.* at 24-25 (citing *Mellow* and *Holt I*). Congressional Intervenors contend that the Court should consider this and any evidence, objective and subjective, consistent with the Commonwealth’s precedent. *Id.* at 27. Notably, they point out that their plan keeps Pittsburgh intact, it keeps certain areas intact based on transportation corridors; shared school districts; shared commercial commuter connections; shared manufacturing interests, a public transit authority, and a regional health system; commuter suburbs, universities and hospital networks, and a camp and resort region; commercial centers and communities; shared commercial, cultural, and transportation connections; a manufacturing sector versus a more rural area without manufacturing. *Id.* at 29-33. Congressional Intervenors contend that mathematical

“compactness scores will not fully that Reschenthaler 1 and 2 attempt to keep political subdivisions whole—consistent with communities of interests.” *Id.* at 33.

Finally, Congressional Intervenors acknowledge the Court’s ability to consider other subordinate factors, including competitiveness, incumbency protection, and partisan fairness. In this regard, they contend, Reschenthaler 1 and 2 are substantially similar to the 2018 Remedial Plan, in that each Reschenthaler map creates eight Republican, five Democrat, and four toss-up districts, compared to the 2018 Plan’s seven-six-five breakdown. *Id.* at 38. Moreover, Congressional Intervenors note, the mean-median index across different elections ranges from 0 to 3.8, while the average mean-median indexes are 1.85 and 1.89, showing the plans are sufficiently competitive. *Id.* at 39-40. Congressional Intervenors further claim the map creates a fair partisan balance. *Id.* at 41-42. On these bases, Congressional Intervenors request that this Court adopt either Reschenthaler 1 or Reschenthaler 2.

Finally, Congressional Intervenors assert that “Petitioners have attempted to create a number of false ‘deadlines’ by which . . . this Court must purportedly act to either enact or select a congressional reapportionment plan before the date of the 2022 General Primary Election. *Id.* at 43. In doing so, Congressional Intervenors suggest that the Court has until at least February 22, 2022, to review, consider, and select an appropriate congressional reapportionment plan before the 2022 General Primary Election would be impacted, which is similar to what occurred in *LWV II*. *Id.* at 43-45.

6. House Democratic Caucus Intervenor (McClinton)

House Democratic Caucus Intervenor McClinton asserts that the House Democratic Caucus Plan should be accepted by the Court because it meets the

constitutional requirements governing congressional redistricting, as set forth by the Supreme Court in *LWV II*. (House Democratic Caucus Intervenor Br. in Support at 5.) House Democratic Caucus Intervenor McClinton specifically asserts that, under the Caucus’s Plan, “populations between districts are as equal as practicable and reflect population shifts in the 2020 Census[,]” noting that they reflect “a population deviation of only two people between the largest and smallest districts.” *Id.* at 7-8. House Democratic Caucus Intervenor McClinton also maintains that the Caucus’s Plan is compact, with a Reock score of 0.43 and a Polsby-Popper score of 0.28, which scores are in line with the 2018 Remedial Plan, and contiguous. *Id.* at 8. Further, the Plan minimizes splits of political boundaries, with 16 counties, 18 municipalities, and 16 voting precincts that are divided. *Id.* at 9. For these reasons, House Democratic Caucus Intervenor McClinton requests that this Court accept the House Democratic Caucus’s Plan.

7. Senate Democratic Caucus Intervenors (Costa et al.)

The Senate Democratic Caucus Intervenors, like other Parties and *Amicus* Participants, acknowledge that the traditional redistricting criteria of *LWV II*, the Free and Equal Elections Clause, and the VRA guide this Court’s analysis in choosing a map. (Senate Democratic Caucus’s Br. in Support at 8-14.) The Senate Democratic Caucus contends that its Proposed Plan 1 complies with the above requirements because it creates districts of equal population, maintains a majority-minority district, and employs the traditional redistricting criteria to avoid vote dilution. *Id.* at 14-18. Specifically, the Senate Democratic Caucus’s Proposed Plan 1 achieves equal population, with 12 districts with 764,865 residents, and 5 districts with 764,864 residents; provides minorities with equal opportunity to elect the

candidate of their choice under the VRA and create a number of potential coalition district to increase the voices of minorities; is compact, contiguous, and does not split any political subdivisions unnecessarily; and avoids partisan vote dilution, as evidenced by its partisan bias metric score, efficiency gap metric score, the mean-median difference metric, and a declination metric, and the number of competitive districts in the Plan. *Id.* at 14-16; *see* Senate Democratic Caucus’s Expert’s Report at 11-18. While the Plan, and Proposed Plan 2, splits the City of Pittsburgh, the Senate Democratic Caucus contends it does so in a way so as to preserve communities of interest. *Id.* at 16. As for its Proposed Plan 2, the Senate Democratic Caucus informs that the primary difference between Plan 1 and Plan 2 is that Plan 2 creates an expanded minority coalition in District 2 in Philadelphia. *Id.* at 19-20. Accordingly, the Senate Democratic Caucus requests that this Court adopt one its redistricting plans.

In its response brief, the Senate Democratic Caucus responds to the Senate and House Republican Leaders’ argument that HB 2146 is entitled to deference, finding such argument to be without merit. (Senate Democratic Caucus Resp. Br. at 9-12.) Further, with respect to the various arguments set forth about changing the 2022 Primary Election calendar, the Senate Democratic Caucus indicates it would defer to the executive branch ability to determine its needs in terms of administering the election laws. *Id.* at 13.

8. Khalif Ali et al.

Amicus Participants Khalif Ali et al. assert that any new redistricting plan must make use of the Legislative Reapportionment Commission’s (LRC) adjustments to the United States Census Bureau’s data, which “returns nearly 30,000

state prisoners to their home addresses from their [prison] cell addresses.” (Br. of *Amici* Khalif Ali et al. at 9-10.) Accordingly, Ali et al. inform that their proposed Plan is drawn based on the prisoner-adjusted data used by the LRC. *Id.* at 10. Ali et al. claim that counting prisoners in their cells unfairly distorts districts in violation of the Pennsylvania Election Code⁴⁴ and the Free and Equal Elections Clause of the Pennsylvania Constitution. *Id.* at 10-13. Moreover, Ali et al. claim that districting plans can be based on adjusted census data because there is nothing in federal or state law that prohibits the Commonwealth from doing so. *Id.* at 14-16. Although Ali et al. used the prisoner-adjusted data in creating their Plan, they agree that any redistricting plan should preserve, and in fact give precedence to, communities of interest in accordance with *Mellow*. (Br. of *Amici* Khalif Ali et al. at 16-23.) Ali et al. further agree with the other Parties and *Amicus* Participants that the neutral redistricting criteria are paramount, not impermissible partisan or political criteria. *Id.* at 24-27. Finally, Ali et al. assert that their Plan meets the threshold neutral redistricting criteria and is comparable to the Governor’s Plan. *Id.* at 28-29. For these reasons, Ali et al. suggest that the Court should choose their Plan.

9. Voters of the Commonwealth

Voters of the Commonwealth assert that their Plan is contiguous, because “[e]ach precinct within each district borders at least one other precinct within that same district; no part of any district is wholly physically separate from any other part.” (Br. of *Amici Curiae* Voters of the Commonwealth in Support of Plan at 11-12.) Further, Voters of the Commonwealth state that their Plan achieves equal population amongst districts, in that 5 districts contain 764,864 residents and

⁴⁴ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

the other 12 districts contain 764,865. *Id.* at 13. Regarding compactness, Voters of the Commonwealth claim that their Plan has higher mean, median, and minimum Reock, Polsby-Popper, and Schwartzberg measure scores than the 2018 Remedial Plan, and also compares favorably to the Governor’s Proposed Plan. *Id.* at 13-16 (*see* Tables 3 and 8). Voters of the Commonwealth further assert that their Plan minimizes splits of political subdivisions, with only 15 county splits, and keeps intact both Bucks County and Montgomery County each in one congressional district, as has historically been the norm. *Id.* at 16-17. Further, Voters of the Commonwealth point out that their Plan splits only 17 municipalities, while keeping intact the state’s largest cities including Pittsburgh, Allentown, Reading, and Erie. *Id.* at 19.

Voters of the Commonwealth additionally argue that their Plan accounts for VRA principles, in that the Plan “creates at least one district in which Black voters comprise a majority of the Voting Age Population[, which] is the same number of such districts in the existing plan.” *Id.* at 21-22. They also highlight that “minority groups comprise almost 65% of the Voting Age Population in another district” *Id.* at 22. Voters of the Commonwealth further assert that their Plan places most incumbents in districts by themselves, which assures that neither political party is adversely affected. Finally, noting that the Supreme Court in *LWV II* did not adopt a particular measure to determine the extent to which partisan considerations may be taken into account but that numerous measures have since been used therefor, Voters of the Commonwealth contend that their Plan’s mean-median gap of between 2% and 3% is within the normal range, as is their Plan’s efficiency gap of between 3% and 5.6%, which is comparable to the 2018 Remedial

Plan. *Id.* at 24-25. Accordingly, *Amicus* Participants Voters of the Commonwealth would like this Court to consider their proposed Plan.

10. Draw the Lines PA

In its Statement submitted in support of its proposed 17-district congressional district map submitted to this Court for consideration, *Amicus* Participant Draw the Lines PA informs that its Plan is a “nonpartisan Citizens’ Map . . . that aggregates what over 7,200 Pennsylvanians, representing 40 of Pennsylvania’s 67 counties, collectively mapped” via a group of citizen mappers from throughout the Commonwealth, which group was formed following Draw the Lines PA’s public mapping competition. (Proposed Redistricting Plan and Supporting Statement of *Amici Curiae* Draw the Lines PA Participants at 2.) Draw the Lines PA asserts that its Plan is superior in terms of the traditional redistricting criteria of *LWV II*, and further complies with the VRA, “and other metrics important to Pennsylvanians, including competitiveness, partisan fairness, and representation of communities of interest.” *Id.* Draw the Lines PA informs that it presented its Plan to leaders of the General Assembly, “as a potential starting point[,]” and they claim that Governor Wolf has also “touted the Citizens’ Map as meeting the principles proposed by his Pennsylvania Redistricting Advisory Council[.]” *Id.* at 2-3. On these bases, Draw the Lines PA would like for this Court to consider their proposed Plan.

11. Citizen Voters

Amicus Participants Citizen Voters have submitted a proposed 17-district congressional district plan for this Court’s consideration. (Citizen Voters’ Proposed Map of Congressional Districts at 1.) Citizen Voters contend that their

proposed Plan “restores the following counties which were split by Pennsylvania’s 2018 Congressional District Map: Washington, Cambria, Butler, and Centre.” *Id.* Citizen Voters maintain that their proposed Plan “endeavors to maintain communities of interest in one congressional district[,]” and, as an example, they point to their Plan’s inclusion of “the City of Pittsburgh and the South Hills of Allegheny County in one district in District 17.” *Id.* Citizen Voters further asserts that their proposed Plan splits less municipalities than the 2018 Remedial Plan with fewer than 16 municipality splits, as compared to the 19 municipality splits in the 2018 Remedial Plan. *Id.* at 1-2. Citizen Voters also note that their Plan splits only 14 counties, with 3 counties splitting into 3 congressional districts and 11 counties split into 2 congressional districts. *Id.* at 2. On these bases, Citizen Voters would like for this Court to consider their proposed Plan.

V. ANALYSIS AND FINDINGS OF FACT AND CONCLUSIONS OF LAW⁴⁵

A. Traditional Neutral Criteria

1. Contiguity

CL1. All plans presented to the Court met the contiguous requirement. All plans proposed districts of contiguous territory. *See* Duchin Expert Rebuttal 2; *see also* DeFord Expert Rebuttal 9.

CL2. No part of any district in any plan was wholly separated from any other part and the configuration of the districts in all plans allows travel from any point within the district to another point without leaving the district.

⁴⁵ The Concerned Citizens for Democracy’s proposed redistricting plan was filed late, the group was thus denied amicus status, and its proposed plan therefore will receive no consideration.

CL3. Accordingly, all 13 plans presented to the Court satisfy the contiguity requirements.

2. Population Equality

CL1. Each and every proposed plan in this case satisfies the command in the Free and Equal Elections Clause that congressional districts be created “as nearly equal in population as practicable.” *See* Pa. Const. art. II, § 16 (stating that “representative districts . . . shall be composed of compact and continuous territory as nearly equal in population as practicable . . .”).

CL2. Every plan contains districts that have a maximum population deviation of one person, with the exception of the Carter Plan and the House Democratic Plan, which both yield districts that have a two-person deviation.

FF1. It has been argued by the Congressional Intervenors and others that a two-person deviation renders the above plans flawed.

CL3. The “one person, one vote” principle is not literal, and the U.S. Supreme Court has held that where the maximum population deviation between the largest and smallest district is less than 10%, a state or local legislative map presumptively complies with the one person, one vote rule. *See Abbott*, 136 S. Ct. at 1124; *see also Mellow*, 607 A.2d at 207.

FF2. All the experts agree that the ideal district population for each of the Commonwealth’s 17 reapportioned congressional districts is approximately 764,864 or 764,865 persons.

CL4. While a two-person district might in itself be statistically insignificant and was apparently the byproduct of legitimate efforts to limit the number of municipal splits, most of the maps were able to achieve a one-person

deviation. *See Mellow*, 607 A.2d at 207; *Larios v. Cox*, 300 F. Supp. 2d 1320, 1338 (N.D. Ga.) (three-judge court), *aff'd mem.*, 542 U.S. 947 (2004).

FF3. The Court finds that because all parties, but two, were able to produce maps with a one-person deviation, the maps that were unable to do so will be given less weight.

FF4. With the exception of one *Amicus* Participant, Ali, all Parties and *Amici* relied on Pennsylvania's Legislative Reapportionment Commission (LRC) Data Set #1, which takes the 2020 Census Redistricting Data (Public Law 94-171) Summary File for Pennsylvania and adjusts it "to contain the most recent voting precinct boundaries in Pennsylvania, reflecting any boundary changes that occurred after the data was last submitted to the Census Bureau." Pennsylvania Redistricting: Maps, <https://www.redistricting.state.pa.us/maps/#congressional-districts>. (last visited Jan. 30, 2022.) *See* Dr. Duchin N.T., 1/27/22 Tr. 331:25-332:17.

FF5. The Ali Plan instead relied on the LRC's Data Set #2, which "contains the same updated geography as Data Set #1, but also contains population adjustments to account for the reallocation of most prisoners to their last known addresses prior to incarceration." Legislative Reapportionment Comm'n, Pennsylvania Redistricting: Maps, <https://www.redistricting.state.pa.us/maps/#congressional-districts>. (last visited Jan. 30, 2022); *see also* Dr. Duchin N.T., 1/27/22 Tr. 332:10-13, 332:17-20.

CL5. Consistent with the Supreme Court's approach in *LWV III*, 181 A.3d at 583, n.8, and in *Mellow*, 607 A.2d at 218-19, the Court believes that, on comparison, the most appropriate map for this case would rely on Data Set #1.

CL6. In seeking to alter the presumptive norm and traditional and commonly accepted practice of relying on LRC's Data Set #2, Ali is essentially

asking the Court to make a determination that prisoners have a constitutional, statutory, or common law right to have their home residential addresses considered as the place for calculating the geographical breakdowns in population. These issues are not properly before the Court.

CL7. While we appreciate the goals and concerns expressed by Ali, absent legislation or a constitutional requirement to the contrary, the Court cannot find that Data Set #2 should be used at this time for congressional districting. *See* Pa. House Res. 165 (requiring the use of Data Set #1 in any congressional redistricting legislation before the 2030 Census).

CL8. The Ali Plan's adjustments in population, relocating prisoners to their residential addresses, would result in a population deviation of 8,676 people. *See, e.g.*, Gressman Post-Trial Submission at Ex. A, p.3.

CL9. Given that the Ali Plan relies on Data Set #2, while all the other plans utilize Data Set #1, this Court ultimately places little to no weight on the Ali plan or map and, based on its other credibility and evidentiary weight determinations, discussed below, finds that the Ali plan or map cannot appropriately be compared to other maps.

CL10. Applying the traditional neutral criteria, the Court concludes that the remaining 12 plans are contiguous, and all 12 plans are closely population-balanced for the 2020 Census population.

CL11. Accordingly, in agreement with the expert for the Governor, the neutral criteria most relevant for distinguishing the remaining 12 plans are compactness and respect for counties and municipalities.

3. Comparison of Remaining 12 Maps under Traditional Neutral Criteria

FF1. Dr. Duchin examined the Governor’s Plan and the other twelve plans submitted to the Court to determine which plans satisfy an “excellent standard” regarding the traditional criteria, *i.e.*, the *LWV II* neutral benchmarks. *See* Duchin Report at 2; Amended Post Hearing Submission of Intervenor-Respondent Gov Tom Wolf (Wolf Post Hearing Submission) ¶40.

FF2. Applying the traditional criteria, Dr. Duchin concluded that “[a]ll 13 plans are contiguous, and all 13 plans are closely population-balanced for either Census PL population or prisoner-adjusted population.” (Duchin Resp. Report at 2; Wolf Post Hearing Submission ¶47.)

FF3. Dr. Duchin stated that, “the neutral criteria most relevant for distinguishing the plans are **compactness** and **respect for counties and municipalities.**” *Id.* (emphasis in original); Wolf Post Hearing Submission ¶48.

FF4. Dr. Duchin included the following chart showing a comparison of compactness and splitting metrics for each of the plans submitted to the Court.

Table 1: Comparison of compactness and splitting metrics.

name	mean Polsby	mean Schwartz	mean Reock	mean ConvHull	mean PopPoly	cut edges	split counties	county pieces	split munis	muni pieces
GovPlan	0.3808	1.6534	0.4313	0.8257	0.7834	5185	16	35	18	37
CitizensPlan	0.3785	1.6625	0.4512	0.8120	0.7725	5237	14	30	16	33
HB-2146	0.3212	1.8197	0.4087	0.7987	0.7524	5907	15	33	16	34
Carter	0.3214	1.8103	0.4499	0.7922	0.7416	5926	14	31	20	41
Gressman/GMS	0.3478	1.7351	0.4261	0.8176	0.7582	5582	15	32	16	33
HouseDemCaucus	0.2787	1.9693	0.4286	0.7717	0.7205	6853	16	34	18	37
SenateDemCaucus1	0.3147	1.8144	0.4137	0.7918	0.7519	6047	17	36	19	39
SenateDemCaucus2	0.3346	1.7478	0.4146	0.8153	0.7601	5505	16	34	16	33
Resenthaler1	0.3629	1.6859	0.4347	0.8238	0.7737	5090	13	29	16	33
Resenthaler2	0.3524	1.7127	0.4231	0.8161	0.7658	5237	13	29	16	33
CitizenVoters	0.3490	1.7133	0.4412	0.8082	0.7575	5173	14	31	16	33
VotersOfPA	0.3965	1.6069	0.4697	0.8209	0.7681	5052	15	31	18	37
KhalifAli	0.3523	1.7204	0.4448	0.8111	0.7456	5266	16	35	18	37

4. Political Subdivision Splits

CL1. As noted repeatedly throughout this opinion, a central consideration is the degree to which a proposed districting plan respects the boundaries of political subdivisions.

CL2. According to *LWV II*, when applying the Pennsylvania Constitution to a congressional districting plan, courts must look to article II, section 16, which provides that, unless necessary to ensure equality of population, the plan must not divide any “county, city, incorporated town, borough, township or ward.” Pa. Const. art. II, §16.

FF1. Although many of the experts who provided analysis of the proposed plans identified the number of political subdivision splits present in each plan, it is noteworthy that the numbers that these experts reported do not always agree.

FF2. By and large, the Parties also did not offer much in the way of evidence challenging the numbers of political subdivision splits that each Party reported with respect to its own plan, or the methodology by which the experts counted such splits.

CL3. Accordingly, in this Court’s view, the fairest way to assess the number of political subdivision splits in the proposed plans is to generally accept the figures offered by each Party’s expert with respect to that Party’s plan.

FF3. There are two caveats to this approach. First, the Court notes that the political subdivision numbers reported by Dr. Duchin and Dr. Barber are highly consistent, and have only a few small differences. (*See Duchin Resp. Report at 2; Barber Resp. Report at 8.*)

FF4. Accordingly, where a Party or *Amicus* Participant fails to identify a relevant figure, or a number is such an outlier that it strains credulity, the Court

will look to Dr. Duchin and Dr. Barber's charts and, if consistent, accept that number.

FF5. Second, numerous Parties and *Amicus* Participants did not identify the number of divided wards in their plans, or did not compare the other proposed plans on that point. Dr. DeFord, however, provided a comprehensive assessment of the ward splits in all of the proposed plans. (*See* DeFord Resp. Report at 8, 27.)

FF6. Accordingly, where a Party or *Amicus* Participant fails to identify the number of divided wards in its proposed plan, or the reported number is a significant outlier, the Court will accept the number reported by Dr. DeFord.

a. Carter Plan

FF7. The Carter Plan divides 13 counties.

FF8. It divides 19 municipalities. (Rodden Report at 21-22.)

FF9. The Carter Petitioners do not identify the number of ward divisions, but Dr. DeFord reports that the Carter Plan splits 25 wards. (DeFord Resp. Report at 8.)

b. Gressman Plan

FF10. The Gressman Plan divides 15 counties, 19 municipalities, and 15 wards. (DeFord Report at 9, 13-15, 16-17.)

c. Governor's Plan

FF11. The Governor's Plan divides 16 counties.

FF12. It further divides 18 municipalities. (Duchin Report at 8.)

FF13. The Governor does not identify the number of ward divisions, but Dr. DeFord reports that the Governor's Plan splits 25 wards. (DeFord Resp. Report at 8.)

d. HB 2146

FF14. HB 2146 divides 15 counties.

FF15. Dr. Memmi reports that HB 2146 divides 19 municipalities, but Dr. Barber reports that it divides 16. (Memmi Report at 5; Barber Report at 16.)

FF16. Dr. Duchin also reports that it divides 16 municipalities, which agrees with Dr. Barber, and this number is therefore accepted. (Duchin Resp. Report at 2.)

FF17. Dr. Memmi reports that HB 2146 divides 9 wards, but this number is a significant outlier in comparison to all other proposed plans. (Memmi Report at 5.) Dr. DeFord reports that HB 2146 divides 18 wards. (Dr. DeFord Resp. Report at 8.)

e. Senate Democratic Caucus Plan 1

FF18. The Senate Democratic Caucus 1 Plan divides 17 counties, 19 municipalities, and 18 wards. (Schoenberg Decl. ¶¶38-40.)

f. Senate Democratic Caucus Plan 2

FF19. The Senate Democratic Caucus 2 Plan divides 16 counties, 16 municipalities, and 14 wards. (Schoenberg Decl. ¶¶48-50.)

g. House Democratic Caucus Plan

FF20. The House Democratic Caucus Plan divides 16 counties, 18 municipalities, and 22 wards. (House Democratic Caucus Br., App. B (Legislative Data Processing Center Report).)

h. Resenthaler 1 Plan

FF21. The Resenthaler 1 Plan divides 13 counties, 16 municipalities, and 25 wards. (Brunell Report at 4-6.)

i. Resenthaler 2 Plan

FF22. The Reschenthaler 2 Plan also divides 13 counties and 16 municipalities, but divides 24 wards. (Brunell Report at 4-6.)

j. Draw the Lines PA Plan

FF23. The Draw the Lines Plan divides 14 counties and 16 municipalities. (Villere Statement at 4.)

FF24. The Draw the Lines *Amici* do not identify the number of ward divisions, but Dr. DeFord reports that the Draw the Lines Plan splits 16 wards. (DeFord Response Report at 27.)

k. Ali Plan

FF25. The Ali *Amici*'s expert did not expressly identify the number of political subdivision splits in the Ali Plan.

FF26. The Ali *Amici*'s report 19 total splits of counties, but do not specify the number of counties that are split. (Ali Br. at 28.)

FF27. They report a remarkably high 177 municipality splits, but this is an extreme outlier. *Id.*

FF28. Dr. Duchin and Dr. Barber both report that the Ali Plan divides 16 counties and 18 municipalities, so the Court accepts these numbers instead. (Duchin Resp. Report at 2; Barber Resp. Report at 8.)

FF29. The Ali *Amici* also do not identify the number of ward divisions, but Dr. DeFord reports that the Ali Plan splits 33 wards. (DeFord Resp. Report at 27.)

l. Citizen-Voters Plan

FF30. The Citizen-Voters Plan divides 14 counties and 16 municipalities. (Citizen-Voters Br. at 2.)

FF31. The Citizen-Voters *Amici* did not include any expert report in support of their proposal; however, Dr. Duchin and Dr. Barber both report identical numbers, so they are accepted as accurate.

FF32. The Citizen-Voters *Amici* do not identify the number of ward divisions, but Dr. DeFord reports that that the Citizen-Voters Plan splits 21 wards. (DeFord Resp. Report at 27.)

m. Voters of PA Plan

FF33. The Voters of PA Plan divides 15 counties and 17 municipalities. (Trende Report at 13, 16.)

FF34. The Voters of PA *Amici* do not identify the number of ward divisions, but Dr. DeFord reports that the Voters of PA Plan splits 41 wards. (DeFord Resp. Report at 27.)

n. Summary

FF35. With these figures collected, we can begin to draw some conclusions about which proposed plans perform the best on this criterion.

FF36. The plans that split the fewest counties are: both Reschenthaler Plans, and the Carter Plan, all of which divide 13 counties; followed by the Draw the Lines Plan, which splits 14 counties.

FF37. The plans that split the fewest municipalities are: HB 2146, both Reschenthaler Plans, the Senate Democratic Caucus 2 Plan, the Draw the Lines Plan, and the Citizen-Voters Plan, all of which divide 16 municipalities.

FF38. The plans that split the fewest wards are: the Senate Democratic Caucus 2 Plan, which divides 14 wards; the Gressman Plan, which divides 15 wards, the Draw the Lines Plan, which divides 16 wards, and HB 2146, which divides 18 wards.

FF39. In total, then, the plans which divide the fewest counties, cities, incorporated towns, boroughs, townships, and wards are: the Senate Democratic Caucus 2 Plan, which divides 46; HB 2146 and the Gressman Plan, which both divide 49; the Citizen-Voters Plan, which divides 51; and the Reschenthaler 1 and 2 Plans, which divide 53 and 54, respectively.

FF40. Quite apparently, most of these plans perform quite well in terms of maintaining the boundaries of political subdivisions.

FF41. It is worth emphasizing, however, that of all the plans proposed, only the Reschenthaler Plans were able to divide only 13 counties and 16 municipalities—the lowest number in both categories.

FF42. Indeed, a number of experts testified that it is possible to create a 17-district plan that splits only 13 counties and 16 municipalities. (N.T. at 170 (testimony of Dr. Rodden), 287 (testimony of Dr. DeFord), 461 (testimony of Dr. Duchin).)

FF43. This is precisely what both Reschenthaler plans managed to do.

5. Compactness

FF1. Dr. Duchin concluded that, with respect to compactness, “the maps [submitted to the Court] are quite good across the board, but that you can still see some that are better.” (N.T. at 334:15-21.)

FF2. Dr. Duchin explained:

By far the two most compact plans, considering these metrics overall, are VotersOfPA and GovPlan. The next two, some ways behind the leaders, are Reschenthaler1 and CitizensPlan.

(Duchin Resp. Report at 2.)

FF3. We find Dr. Duchin’s opinion in this regard to be credible.

FF4. Dr. Duchin testified that Governor Wolf’s proposal to split Pittsburgh into two congressional districts actually allowed his plan to achieve higher compactness scores, specifically on the Polsby-Popper measure. (N.T. at 216-17 (testimony of Dr. DeFord), 436 (testimony of Dr. Duchin); Villere Report at 4.)

CL. This effect on compactness compromises Governor Wolf’s compactness scores and renders them not comparable to other maps which did not split Pittsburgh into two congressional districts.

6. Splitting of Pittsburgh Into Two Congressional Districts

FF1. Among the considerations addressed by the parties relating to the splitting of political subdivisions, and an important one in this Court’s view, is whether a proposed plan divides the City of Pittsburgh into multiple districts.

FF2. By all accounts, the City of Pittsburgh has remained within a single congressional district in all previous districting plans, including the existing plan enacted in 2018.

CL1. It cannot be gainsaid that, under the standards listed in the Pennsylvania Constitution and applied to congressional redistricting by our Supreme Court, boundaries such as those of City of Pittsburgh should not be divided across multiple districts unless it is *absolutely necessary* to achieve population equality. *See* Pa. Const. art. II, §16 (“Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided”); *LWV II*, 178 A.3d at 816-17 (congressional districts shall not “divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population”).

FF3. As Pennsylvania's second largest city, Pittsburgh is certainly an important political unit.

FF4. Despite its size, however, it is undisputed that Pittsburgh's population is not so great that it is *necessary* to divide the city into multiple congressional districts, as is the case with Philadelphia.

FF5. Philadelphia is the only municipality in the Commonwealth that is larger than a population of a single congressional district.

FF6. Thus, Philadelphia must be split into districts. *See, e.g.*, N.T. at 270 (testimony of Dr. DeFord), 524 (testimony of Dr. Barber).

FF7. The splitting of Pittsburgh, then, may achieve certain other ends, but population equality is not one. For instance, due to its irregular border, the decision to split Pittsburgh into two districts allows a plan to achieve higher compactness scores, specifically on the Polsby-Popper measure. (N.T. at 216-17 (testimony of Dr. DeFord), 436 (testimony of Dr. Duchin).)

FF8. Another end that can be achieved by splitting Pittsburgh is that it may allow a plan to use Pittsburgh's Democratic-leaning population to create two districts in the immediately surrounding area that are likely Democratic-leaning, instead of only one. (N.T. at 526-27 (testimony of Dr. Barber).)

CL2. An effort to achieve a partisan advantage through the splitting of a city is, of course, suspect. *See* Barber Report at 28 ("the true purpose served by splitting Pittsburgh in half is likely the achievement of partisan ends").

FF9. The Court further heard credible evidence which supports the conclusion that the City of Pittsburgh in many ways constitutes a community of interest, such that its division would not be in the best interest of its residents.

FF10. Dr. Naughton testified that Pittsburgh voters tend to particularly favor local candidates in statewide elections. (N.T. at 695-96.) The Court finds this testimony credible as no other party put forth any evidence that refuted the veracity of his opinion.

FF11. Moreover, City of Pittsburgh residents share common interests in a representative's advocacy for the acquisition of federal funds and the obtaining of constituent services. (N.T. at 836-37 (testimony of Dr. Naughton).) The Court finds this testimony credible as no other party put forth any evidence that refuted the veracity of his opinion.

FF12. In addition, splitting the City of Pittsburgh into two districts would create two districts in which portions of the City would be grouped with surrounding suburban areas. This could incentivize candidates and representatives to favor either parts of the City or parts of the suburbs depending upon where they believe they can get more votes, and thereby place less representational focus on the disfavored areas. (N.T. at 713-15 (testimony of Dr. Naughton).) The Court finds this testimony credible as no other party put forth any evidence that refuted the veracity of his opinion.

FF13. To the extent that the Declaration of Michael Lamb advocates for the splitting of the City of Pittsburgh into two congressional districts, this Court finds the declaration unpersuasive because it is based on Mr. Lamb's life and subjective **personal** experiences, which the Court does not find particularly useful or credible. Moreover, Mr. Lamb's was not presented as an expert and his declaration does not address why it is absolutely necessary to split the City of Pittsburgh to achieve population equality in any congressional district.

FF14. It is also notable that in *Mellow*, the City of Pittsburgh had been and was proposed by all to remain entirely within one district. *Mellow*, 607 A.2d at 223.

CL3. In light of all of these considerations, this Court concludes that the maintenance of the City of Pittsburgh within one district is an important factor, which is entitled to weight in the ultimate analysis.

FF15. The Governor’s Plan, the Senate Democratic Caucus Plan 1 and Plan 2, the Draw the Lines PA Plan, and the plan submitted by Khalif Ali propose to divide the City of Pittsburgh.

FF16. None of the parties who split the City of Pittsburgh, including the Governor, presented any credible evidence as to why it was “absolutely necessary” to split the second largest city in Pennsylvania, in order to achieve equal population.

FF17. Dr. Naughton emphasized the community of interest factor and opined the City of Pittsburgh should absolutely not be split. The Court finds this testimony credible as no other party put forth any evidence that refuted the veracity of his opinion.

FF18. Without evidence substantiating the absolute necessity to split the City of Pittsburgh, the Court finds that the end that was to be achieved by doing so was to divide the City of Pittsburgh’s Democratic leaning population to create two districts in the immediately surrounding area that are Democratic leaning, instead of one. *See* N.T. at 524-25 (Barber); Barber Rebuttal Report at 8, Table 1, 23.

FF19. The five plans that split the City of Pittsburgh into two congressional districts, *i.e.*, the Governor’s Plan, the Senate Democratic Caucus Plan

1 and Plan 2, the Draw the Lines PA Plan, and the plan submitted by Khalif Ali, will be given less weight than the plans which did not split the City of Pittsburgh.

FF20. Although the House Democratic Caucus’s Plan keeps the City of Pittsburgh whole, it instead draws a Freddy Krueger-like claw district in Allegheny County to “grab” Pittsburgh to combine it with small Republican-leaning areas to the north.

7. Communities of Interest

The discussion of splitting Pittsburgh is an appropriate segue into the importance of considering communities of interest relationships in redistricting efforts. As the Supreme Court has recognized, “redistricting efforts may properly seek to preserve communities of interest which may not dovetail precisely with the static lines of political subdivisions.” *Holt*, 67 A.3d at 1241.

A common thread running through the Supreme Court’s opinion in *LWV II* is that, to the greatest degree practicable, a congressional redistricting plan should avoid dividing a community with shared interests and concerns.⁴⁶ In adopting these “neutral criteria,” the Supreme Court reasoned that “[t]hese standards place the greatest emphasis on creating representational districts that both maintain the

⁴⁶ Notably, *LWV II* repeatedly references the significance of communities in its analysis. 178 A.3d at 816 (“When an individual is grouped with other members of his or her community in a congressional district for purposes of voting, the commonality of the interests shared with the other voters in the community increases **the ability of the individual to elect a congressional representative for the district who reflects his or her personal preferences.**”). Moreover, in evaluating the historic underpinnings that lead to the development of the neutral criteria it prescribed, the Court emphasized that the Free and Equal Elections Clause, in its original form, provided that “all elections ought to be free; and that all free men **having a sufficient evident common interest with, and attachment to the community,** have a right to elect officers, or to be elected into office.” *Id.* (quoting Pa. Const. of 1776, art. I, § VII) (emphasis added).

geographical and social cohesion of the communities in which people live and conduct the majority of their day-to-day affairs[.]” *LWV II*, 178 A.3d at 814.

Accordingly, although compactness, contiguity, and respect for municipal boundaries are undoubtedly the primary tool for evaluating the constitutionality of a redistricting plan, we understand these principles serve to advance the Free and Equal Elections Clause’s overarching goal of protecting the interest of communities. In many ways, redistricting’s most basic objective is to provide communities with adequate representation. As Dr. Naughton credibly testified, this is accomplished by joining communities that share one or more substantial interests that may be the subject of state legislative action. **Indeed, “[t]o be an effective representative, a legislator must represent a district that has a reasonable homogeneity of needs and interests; otherwise the policies he supports will not represent the preferences of most of his constituents.”** *Prosser v. Elections Board*, 793 F. Supp. 859, 863 (W.D. Wis. 1992) (emphasis added); *see also Hall v. Moreno*, 270 P.3d 961, 971 (Colo. 2012) (“**if an important issue is divided across multiple districts, it is likely to receive diffuse and unfocused attention from the multiple representatives it affects, as each is pulled in other directions by the many other issues confronting their districts. However, if a discrete and unique issue is placed in one district, that representative may familiarize herself with the complexities of the issue and the stakeholders it affects.**”).

The term “communities of interest” encompasses “school districts, religious communities, ethnic communities, geographic communities which share common bonds due to locations of rivers, mountains and highways[.]” *Holt I*, 38 A.3d at 746. In *Mellow*, the Court considered a community’s “circulation arteries,

its common news media . . . , its organization and cultural ties[,]” its “common economic base[,]” and the relationship among “schools of higher education as well as others.” 607 A.2d at 220-21. “The matching of interests and representation allows voters with shared interests to have a voice in the legislature that is roughly correlated to their numbers.” Stephen J. Malone, *Recognizing Communities of Interest in a Legislative Apportionment Plan*, 83 VA.L.REV. 461, 465-66 (1997). See also Michael Li, Yuriy Rudensky, *Rethinking the Redistricting Toolbox*, 62 How. L.J. 713, 732 (2019) (a communities of interest analysis when, “[w]ielded well,” can be “powerful in enhancing representation”).

FF1. Not all Parties provided the Court with evidence or expert opinion on how their plans maintain the contiguity of communities that share similar interests.

FF2. The Congressional Intervenors have provided the Court with an expert opinion of Dr. Naughton about how the Reschenthaler 1 and 2 Plans endeavored to keep people with common interests together when considering where to draw the congressional district lines.

FF3. The Court finds Dr. Naughton’s testimony, as it pertains to the importance of keeping of community interests together is based on his professional and personal experience, to be credible as no other party put forth any evidence or expert opinion that refuted the veracity of Dr. Naughton’s opinion.

FF4. Dr. Naughton’s opinions reflect his established and comprehensive knowledge of the communities of interest factor, as it pertains to the political and geographic population and voting tendencies of the people of the Commonwealth upon which he opined, and no other party put forth any evidence or

expert opinion that refuted the veracity of Dr. Naughton's opinions and they are consistent with the opinions of Dr. Duchin.

FF5. Dr. Naughton testified that the City of Pittsburgh, and its various communities, are best served by keeping the City within one congressional district. (N.T. at 712-15.) The Court finds this testimony credible as no other party put forth any evidence or expert opinion that refuted the veracity of Dr. Naughton's opinion.

FF6. Like Dr. Naughton, Dr. Duchin recognized the significance of communities in her redistricting analysis. Dr. Duchin credibly described, with respect to communities of interest, that the fundamental concept is that there is value to maintaining "geographical areas where the residents **have shared interests that are relevant to their representation**. . . . [T]his could be shared history, shared economics, shared culture, many other examples." (N.T. at 342-43) (emphasis added).

FF7. We find Dr. Duchin's testimony about the importance of considering Pennsylvania's communities when redistricting to be credible as it is consistent with Dr. Naughton's opinions and no other party refuted or challenged the veracity of Dr. Duchin's opinion.

FF8. In the Court's careful review of the evidence presented, the Gressman Petitioners did not establish that they considered community interests when deciding to erect boundary lines across the Commonwealth, which is an important factor in the Court's assessment of the evidence.

FF9. Having heard and reviewed the various experts' testimony and reports in this case, the Court has credited the generally accepted proposition that the division of counties and municipalities is not simply a metric that depends solely on mathematical calculation and a numerical result, because many variables are at

play and can be altered or otherwise manipulated in the overall calculus, individually or collectively.

FF10. At the hearing, the Gressman Petitioners' expert, Dr. DeFord, confirmed that he did not consider communities of interest when splitting counties and municipalities to compose the map's districts, and he specifically admitted that he did not conduct "any analysis with respect to the communities of interest related to the City of Pittsburgh." (N.T. at 314-315, 318-22.) In this regard, the Court finds Dr. DeFord's methodology should be given less weight.

FF11. The Citizen Voters did not provide an expert report to support their map. Consequently, the Court received no expert testimonial or written explanation concerning why the map drew the lines in the particular manner that it did and, perhaps, more importantly, to demonstrate why the divides in the maps were absolutely necessary to achieve population equality as opposed to some other secondary or impermissible goal. There was no discussion or evidence whatsoever presented by Citizen Voters that their district lines preserved communities of interests. Left with this evidentiary mode of speculation, the Court provides little to no weight to the map submitted by the Citizen Voters.

FF12. With regard to the Carter Petitioners, their expert, Dr. Rodden, although utilizing a "least change" approach to redistricting, which is discussed more fully below, did not explicitly examine or appear to have considered the specific considerations that need to be taken into account when establishing that splits maintain the surrounding communities of interest.

FF13. To the extent the Carter Petitioners try to equate a "least change" analysis to a community of interest analysis, *see* Carter's Br. at 12, the Court disagrees, because the "least change" method focuses on the preexisting status of a

map's boundary lines, and Dr. Rodden admitted in his report and testimony that, in the past 10 years, there has been dramatic population shifts in Pennsylvania and fluctuating levels of density in specific areas throughout the Commonwealth, which presumably would have resulted in differing communities of interest. *See* Rodden Report at 6-10; N.T. at 85-87, 115-17. *See also* discussion *infra* on the “least change” doctrine.

FF14. In his map details online, the Governor included a statement of the communities of interest he considered when considering where to draw the congressional district lines. *See* <https://www.governor.pa.gov/congressional-districts-map-proposals>.

FF15. Dr. Naughton testified that Bucks County should not be split into districts but should be entirely within one district and that Bucks County has been wholly contained within a single district for decades. (N.T. at 715-16; Dr. Naughton Report at 7) (opining that “[t]he right Bucks County district would have Bucks in its entirety.”). The Court finds this testimony credible as no other party put forth any evidence or expert opinion that refuted the veracity of his opinion.

FF16. Regarding whether to combine Philadelphia's surplus population with Bucks County, Dr. Naughton testified that the communities in Bucks County are more similar to those in Montgomery County, and thus Bucks County should add population by extending the district line into Montgomery County, rather than Philadelphia County. *Id.* Dr. Naughton testified in this regard as follows:

Q. Next split, Philadelphia and Bucks County. Talk to us about what you think should be done in Philadelphia and Bucks County.

A. Bucks County should absolutely not be combined with the city. **The right Bucks County district would have Bucks in its entirety and then move into Montgomery County, as they've done for decades as they're used to, as they have common interests.** I mean, **that border between Bensalem and Philadelphia**, you know, you don't know if you haven't been there. If you -- you know, **if you walk across that line, you know you're in Bucks County. You know it. It is --- those are two different places.** And Bucks, even though it is a diverse place and there's diversity between lower Bucks and upper Bucks, it's used to being together. They work together. They like being a unit. They don't want to be part of the city. I guarantee you that.

(N.T. at 715-16) (emphasis). The Court finds this testimony credible as no other party put forth any evidence or expert opinion that refuted the veracity of Dr. Naughton's opinion.

FF17. In his expert report, Dr. Naughton further opines with respect to Bucks County and Philadelphia's surplus population:

Historically, municipalities in eastern Montgomery County have been attached to Bucks. These are highly similar communities to their Bucks neighbors in demography, economics and land use. Commercial and commuting flow easily across this boundary. Both Counties have robust open space programs.

Attaching the lower Bucks communities to Philadelphia would render these communities "orphans" from an interest and advocacy standpoint. I would go as far to say they could essentially lose representation. And I repeat, the separation of Bensalem and, in one map adjacent lower Bucks municipalities, is entirely unnecessary. Note that equally unfair is a map that is based in Bucks and draws in a portion of northeast Philadelphia – which would, in my

opinion, “orphan” the residents of the city and dilute the city’s political influence.

(Dr. Naughton Report at 7-8.) The Court finds this testimony credible as no other party put forth any evidence or expert opinion that refuted the veracity of his opinion.

FF18. Dr. Naughton opined that Philadelphia’s surplus population would be best combined with a district with maximum commonality – that is, with common interests with Philadelphia, such as use of public transit, recipient of federal transfer payments and common commercial and industrial interests. It for that reason, Dr. Naughton concluded that the most sensible plan would attach surplus Philadelphia residences to Delaware County. (Dr. Naughton Report at 7.) The Court finds this testimony credible as no other party put forth any evidence that refuted the veracity of his opinion.

FF19. Dr. Naughton testified that Delaware County and Philadelphia County share similar communities of interest along their border, and that a map connecting them was ideal. (N.T. at 786, 840-41.) The Court finds this testimony credible as no other party put forth any evidence or expert opinion that refuted the veracity of Dr. Naughton’s opinion.

FF20. Dr. Naughton explained credibly that Philadelphia County should extend into Delaware County to obtain additional population because the communities along the Philadelphia and Delaware County borders have similar needs. (N.T. at 786, 840.)

FF21. This Court finds this is important because, as Dr. Naughton credibly explained, a great deal of federal funding flows through county government. (N.T. at 783-84.)

FF22. Contrary to Dr. Naughton's recommendation, Governor Wolf's Plan splits Bucks County. *See* <https://www.governor.pa.gov/congressional-districts-map-proposals>.

FF23. Consistent with Dr. Naughton's recommendation, HB2146 does not split Bucks County. *See* <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2021&sessInd=0&billBody=H&billTyp=B&billNbr=2146&pn=2541>.

FF24. Contrary to the recommendation of Dr. Naughton, the Governor's Plan connects Philadelphia's surplus population to the southern Bucks County/Bensalem area. *See* <https://www.governor.pa.gov/congressional-districts-map-proposals>.

FF25. Consistent with Dr. Naughton's' recommendation, HB 2146 does not connect Philadelphia's surplus population to Bucks County. <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2021&sessInd=0&billBody=H&billTyp=B&billNbr=2146&pn=2541>.

FF26. Consistent with Dr. Naughton's recommendation, HB 4126 connects Philadelphia's surplus population with Delaware County. <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2021&sessInd=0&billBody=H&billTyp=B&billNbr=2146&pn=2541>.

FF27. The Court finds Dr. Naughton's testimony, as it pertains to the splitting of City of Pittsburgh and Bucks County, the treatment of the surplus of population from Philadelphia, and the importance of protecting communities of interest, to be credible based on his professional and personal experience.

FF28. Dr. Naughton's opinions in this regard reflect his established and credible knowledge of the communities of interest factor, as it pertains to the

political and geographic population and voting tendencies of the people of the Commonwealth upon which he opined and no other party put forth any evidence or expert opinion that refuted the veracity of Dr. Naughton's opinions.

B. Extra-Constitutional Considerations

There was considerable evidence presented regarding the “competitiveness” or “partisan fairness” of the plans. Our inquiry into these subordinate considerations is strictly circumscribed. Specifically, while the Supreme Court in *LWV II* “recognize[d] that other factors have historically played a role in the drawing of legislative districts, such as the preservation of prior district lines, protection of incumbents, or the maintenance of the political balance which existed after the prior reapportionment[,]” it cautioned that it “view[s] these factors to be wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts.” 178 A.3d at 817.

As the Supreme Court stated in *LWV II*, meeting the floor of the Free and Equal Elections Clause traditional criteria, “is not the exclusive means by which a violation of article I, section 5 may be established.” *Id.* The Court repeatedly emphasized that the overarching objective of this provision of our constitution “is to prevent dilution of an individual’s vote by mandating that the power of his or her vote in the selection of representatives be equalized to the greatest degree possible with all other Pennsylvania citizens.” *Id.* In *LWV II*, the Supreme Court noted that there exists the possibility that advances in map drawing technology and analytical software can potentially allow mapmakers to engineer congressional districting maps, which although minimally comporting with this neutral “floor” criteria

nonetheless unfairly dilute the power of a particular group’s vote for a congressional representative. *Id.*

1. **Partisan Fairness**

a. **Political Geography**

In *LWV II*, Dr. Chen addressed the impact of the structural or political geography of Pennsylvania upon the measures of partisan bias and considered the impact of Pennsylvania’s political geography on the 2011 Plan. Dr. Chen explained that he measured the partisan bias of the 2011 Plan by utilizing a common scientific measurement referred to as the mean-median gap. *LWV II*, 178 A.3d at 774. As the Supreme Court stated, “Dr. Chen recognized that ‘Republicans clearly enjoy a small natural geographic advantage in Pennsylvania because of the way that Democratic voters are clustered and Republican voters are a bit more spread out across different geographies of Pennsylvania.’” *Id.* at 774.

FF1. Democratic voters in Pennsylvania are clustered in cities and urban areas, but Republican voters are more evenly distributed in rural areas.

FF2. Based upon the evidence credited, the Court finds that Pennsylvania’s unique “political geography” affects the analysis of partisan advantage in any proposed map.

FF3. In a 2013 article authored by Dr. Rodden regarding unintentional gerrymandering, his results “illustrate[d] a strong relationship between the geographic concentration of Democratic voters and electoral bias favoring Republicans.” (N.T. at 178-80.) The Court finds the article be credible as no other party put forth any evidence that refuted the veracity of his opinions therein.

FF4. To overcome this natural geographic disadvantage, “Democrats would need a redistricting process that intentionally carved up large cities like pizza

slices or spokes of a wheel, so as to combine some very Democratic urban neighborhoods with some Republican exurbs in an effort to spread Democrats more efficiently across districts.” (House Republican Intervenors’ Br. at 23, n.20 (quoting Barber Report at 10 (quoting Jonathan A. Rodden, *Why Cities Lose: The Deep Roots of the Urban-Rural Political Divide*, at 155 (Basic Books 2019))).)

FF5. Dr. Rodden also concluded in this article that “proving such intent in court will be difficult in states where equally egregious electoral bias can emerge purely from human geography.” (N.T. at 181.)

FF6. Dr. Rodden believes these statements to be true today about Pennsylvania. (N.T. at 181.) The Court finds this opinion to be credible as no other party put forth any evidence that refuted the veracity of his opinion.

FF7. The Gressman Petitioners’ expert, Dr. DeFord, credibly concurred, opining that there is a “partisan advantage to Republicans based on the political geography of the state[,]” so it is “not necessarily a surprise to see a slight tilt favoring Republicans” on the metrics he used. (Dr. DeFord Report ¶104; N.T. at 291.) The Court finds this opinion to be credible as no other party put forth any evidence that refuted the veracity of his opinion, and in fact all parties agreed that the political geography of Pennsylvania favors Republicans.

FF8. Analyzing the 2020 presidential election, Dr. DeFord credibly found that “there is not a part of the state where Republican voters are as heavily concentrated as Democratic voters are in the Philadelphia and Pittsburgh areas.” (Dr. DeFord Report ¶104; N.T. at 291-92.) The Court finds this opinion to be credible as no other party put forth any evidence or expert opinion that refuted the veracity of his opinion.

FF9. The Court finds that Dr. Duchin’s report compellingly demonstrates the partisan political geography of the Commonwealth.

FF10. In her expert report, Dr. Duchin credibly found that 100,000 randomly drawn districting plans “tend[ed] to exhibit pronounced advantage to Republicans across this full suite of recent elections.” (Duchin Report at 18.) Dr. Duchin further found in metrics from the partisan symmetry family, including the mean-median score, “random plans favor Republicans,” while the Governor’s Plan “temper[s] that tendency.” (Duchin Report at 19.)

b. Simulations

FF1. One way to evaluate partisan fairness of a map is by comparing it to a set of simulated maps that follow only traditional criteria. *See generally LWV II.*

FF2. This set of simulated districts is helpful because it provides a set of maps to which one can compare the proposed map that also accounts for the geographic distribution of voters in the state.

FF3. Because voters are not distributed evenly across Pennsylvania, one cannot evaluate the fairness of a proposed plan with an apples-to-apples comparison. In other words, if a plan is not evaluated against a non-partisan set of maps, the potential issues or red flags in the maps may not at all be due to partisan gerrymandering, but rather the geographic distribution of the voters in the state. (Barber Report at 11.)

FF4. Dr. Barber conducted a simulation analysis that compared proposed maps with a set of 50,000 simulated maps, a common practice in redistricting and redistricting litigation. (Barber Report at 11-12; N.T. at 352.)

FF5. Dr. Barber identified the methodology for the algorithmic creation of simulated maps in his reports. (N.T. at 350-52.)

FF6. The parameters of the simulation analysis conducted by Dr. Barber included only the traditional redistricting criteria, not partisan data. (N.T. at 350.)

FF7. The simulation analysis performed by Dr. Barber demonstrates that HB 2146 is predicted to result in nine Democratic-leaning seats and eight Republican-leaning seats using an index of statewide elections from 2012-2020, whereas the most likely outcome in his 50,000 simulated maps, created without using partisan data, is eight Democratic-leaning seats and nine Republican-leaning seats.

FF8. The Court credits the opinions and methodology of Dr. Barber, an associate professor of political science at Brigham Young University and faculty fellow at the Center for the Study of Elections and Democracy in Provo, Utah, who received his PhD in political science from Princeton University in 2014 with emphasis in American politics and quantitative methods/statistical analyses.

FF9. Dr. Barber's dissertation was awarded the 2014 Carl Albert Award for best dissertation in the area of American Politics by the American Political science Association.

FF10. Dr. Barber teaches a number of undergraduate courses in American politics and quantitative research methods, including political representation, Congressional elections, statistical methods and research design.

FF11. Dr. Barber served as an expert in a number of cases relating to redistricting and election issues where he was asked to analyze and evaluate various political and elections related data and statistical methods.

FF12. Dr. Barber has conducted research on a variety of election and voting related topics, including advanced statistical methods for the analysis of quantitative data.

FF13. Dr. Barber has published nearly 20 peer-reviewed articles, including in the *American Political Science Review*.

c. Mean-Median Scores

In *LWV II*, Dr. Chen observed that the range of the mean/median gaps created in any of the Simulated Set 1 plans was between “a little over 0 percent to the vast majority of them being under 3 percent,” with a maximum of 4 percent. *Id.* at 262-63. Dr. Chen further explained that this a “normal range,” and that a 6% gap “is a statistically extreme outcome that cannot be explained by voter geography or traditional redistricting principles alone.” *LWV Trial*, 12/11/17, at 263-64, N.T.

FF1. In computing mean-median values, the experts provide varying numbers, although most are within the variation that Dr. Chen described as normal in *LWV II*. *See LWV II*, 178 A.3d at 774 (Dr. Chen noting that the normal range of the mean-median gap is 0-4%, or 0.04).

FF2. Not all of the experts state which election data they used to compute their partisan metrics, such as mean-median scores and efficiency gaps. However, even where the experts do so specify, the expert data used varies significantly from expert to expert.

FF3. Dr. Rodden (for the Carter Petitioners) used only certain years and select races identified as the 2012 Presidential, Senate, Attorney General, Auditor General, and Treasurer races; the 2014 Governor race; the 2016 Presidential, Senate, Attorney General, Auditor General, and Treasurer races; the 2018 Senate

and Governor races; and the 2020 Presidential, Attorney General, 2020 Auditor General, and Treasurer races. (Rodden Report at 3-4.)

FF4. Dr. DeFord (for the Gressman Petitioners) used statewide election data from all races, including Lieutenant Governor and Supreme Court, from 2012-2020. However, for one of his measures that he calls majority-responsiveness, Dr. DeFord does not include Lieutenant Governor information. (DeFord Response Report, Appendix B.)

FF5. Dr. Duchin (for the Governor) does not specify precisely what elections she used; however, it appears from the charts in her report that she potentially used the 2014 Governor race; the 2016 Presidential, Senate, Attorney General, Auditor, and Treasurer races; the 2018 Governor and Senate races; and the 2020 Presidential, Attorney General, Auditor General, and Treasurer races. (Duchin Report at 18-19.)

FF6. Dr. Barber (for the Republican Legislators) used 50,000 simulated models to compare data and used data from statewide races from 2012-2020. (Barber Report at 6.)

FF7. Dr. Caughey (for the Senate Democratic Caucus) used the partisan bias factors and data from the PlanScore website, which he describes as using the 2020 Presidential election as a baseline. (Caughey Report at 2.) Additional details concerning PlanScore's methodology may be found at <https://planscore.campaignlegal.org/models/data/2020/> (last visited February 4, 2020).

FF8. Dr. Brunell (for Congressional Intervenors) used all Presidential, Senate, and Governor races from 2012-2020. (Brunell Report at 9.)

FF9. Sean Trende states that he used data obtained from Redistricting Data Hub, but he does not specify the years or elections used. (Trende Report at 7-8.)

FF10. The following figures are taken from the expert reports of Dr. Rodden, Dr. DeFord, Dr. Duchin, Dr. Barber, Dr. Caughey, Dr. Brunell, and Sean Trende. (*See* Rodden Resp. Report at 11; DeFord Resp. Report at 15, 33; Duchin Resp. Report at 4; Barber Resp. Report at 21; Caughey Resp. Report at 22; Brunell Report at 9; Trende Report at 24.)

i. Carter Plan

FF11. For the Carter Plan, Dr. Barber reports a mean-median difference of -0.006 (-0.6%), favoring Republicans. Dr. DeFord reports -0.016 (1.6%), favoring Republicans. Dr. Rodden reports 0.005 (0.5%) (party advantage unspecified). Dr. Duchin reports -0.113 (-11.3%), favoring Republicans.

ii. Gressman Plan

FF12. For the Gressman Plan, Dr. Barber reports a mean-median difference of 0.014 (1.4%), favoring Democrats. Dr. DeFord reports -0.008 (-0.08%), favoring Republicans. Dr. Rodden reports 0.005 (0.5%) (party advantage unspecified). Dr. Duchin reports -0.0385 (-3.85%), favoring Republicans.

iii. Governor's Plan

FF13. For the Governor's Plan, Dr. Barber reports a mean-median difference of -0.0004 (-0.04%), favoring Republicans. Dr. DeFord reports -0.010 (-1%), favoring Republicans. Dr. Rodden reports 0.006 (0.6%) (party advantage unspecified). Dr. Duchin reports -0.0077 (0.77%), favoring Republicans. Dr. Caughey reports 0.01 (1%), favoring Republicans. Mr. Trende reports -0.011 (-

1.1%) based on 2020 elections, and 0.003 (0.3%) based on 2016-2020 elections (party advantage unspecified).

iv. HB 2146

FF14. For HB2146, Dr. Barber reports a mean-median difference of -0.015 (-1.5%), favoring Republicans, which he explains “is more favorable to Democrats than 85% of the plans in his simulations.” *See* Barber Report at 21. Dr. DeFord reports -0.029 (-2.9%), favoring Republicans. Dr. Rodden reports 0.024 (2.4%). Dr. Rodden specified that this figure favors Republicans. (Rodden Resp. Report at 10.) Dr. Duchin reports -0.2927 (-29.27%), favoring Republicans. Dr. Caughey reports 0.023% (2.3%), favoring Republicans.

v. Senate Democratic Caucus 1 Plan

FF15. For the Senate Democratic Caucus 1 Plan, Dr. Barber reports a mean-median difference of -0.005 (-0.5%), favoring Republicans. Dr. DeFord reports -0.019 (-1.9%), favoring Republicans. Dr. Rodden reports 0.007 (0.7%) (party advantage unspecified). Dr. Duchin reports -0.1382 (-13.82%), favoring Republicans. Dr. Caughey reports 0.007 (0.7%), favoring Republicans.

vi. Senate Democratic Caucus 2 Plan

FF16. For the Senate Democratic Caucus 2 Plan, Dr. Barber reports a mean-median difference of -0.0003 (-0.03%), favoring Republicans. Dr. DeFord reports -0.003 (-0.3%), favoring Republicans. Dr. Rodden reports 0.007 (0.7%) (party advantage unspecified). Dr. Duchin reports 0.0106 (1.06%), favoring Democrats.

Dr. Caughey reports 0.005 (0.5%), favoring Republicans.

vii. House Democratic Caucus Plan

FF17. For the House Democratic Caucus Plan, Dr. Barber reports a mean-median difference of 0.007 (0.7%), favoring Democrats. Dr. DeFord reports -0.009 (-0.9%), favoring Republicans. Dr. Rodden reports 0.004 (0.4%) (party advantage unspecified). Dr. Duchin reports -0.0071 (-0.71%), favoring Republicans.

viii. Resenthaler 1 Plan

FF18. For the Resenthaler 1 Plan, Dr. Barber reports a mean-median difference of -0.021 (-2.1%), favoring Republicans. Dr. DeFord reports -0.027 (-2.7%), favoring Republicans. Dr. Rodden reports 0.01 (1%). Dr. Rodden specified that this figure favors Republicans. (Rodden Resp. Report at 10.) Dr. Duchin reports -0.2524 (-25.24%), favoring Republicans. Dr. Brunell reports 0.0186 (1.6%), favoring Republicans.

ix. Resenthaler 2 Plan

FF19. For the Resenthaler 2 Plan, Dr. Barber reports a mean-median difference of -0.022 (-2.2%), favoring Republicans. Dr. DeFord reports -0.026 (-2.6%), favoring Republicans. Dr. Rodden reports 0.01 (1%). Dr. Rodden specified that this figure favors Republicans. (Rodden Resp. Report at 10.) Dr. Duchin reports -0.2534 (-25.34%), favoring Republicans. Dr. Caughey reports 0.024 (2.4%), favoring Republicans. Dr. Caughey noted that he reviewed the Resenthaler 2 Plan, rather than the Resenthaler 1 Plan, because it was the only one that was provided to him. (N.T. at 897-98.) Dr. Brunell reports 0.0189 (1.89%), favoring Republicans.

x. Draw the Lines Plan

FF20. For the Draw the Lines Plan, Dr. Barber reports a mean-median difference of -0.006 (-0.6%), favoring Republicans. Dr. DeFord reports -0.012 (-

1.2%), favoring Republicans. Dr. Rodden reports 0.006 (0.6%) (party advantage unspecified). Dr. Duchin reports -0.1042 (-10.42%), favoring Republicans.

xi. Ali Plan

FF21. For the Ali Plan, Dr. Barber reports a mean-median difference of -0.012 (-1.2%), favoring Republicans. Dr. DeFord reports -0.018 (-1.8%), favoring Republicans. Dr. Rodden reports 0.004 (0.4%) (party advantage unspecified). Dr. Duchin reports -0.1209 (-12.09%), favoring Republicans.

xii. Citizen-Voters Plan

FF22. For the Citizen-Voters Plan, Dr. Barber reports a mean-median difference of -0.013 (-1.3%), favoring Republicans. Dr. DeFord reports -0.02 (-2%), favoring Republicans. Dr. Rodden reports 0.014 (1.4%) (party advantage unspecified). Dr. Duchin reports -0.1847 (-18.47%), favoring Republicans.

xiii. Voters of PA Plan

FF23. For the Voters of PA Plan, Dr. Barber reports a mean-median difference of -0.012 (-1.2%), favoring Republicans. Dr. DeFord reports -0.027 (-2.7%), favoring Republicans. Dr. Rodden reports 0.026 (2.6%). Dr. Rodden specified that this figure favors Republicans. (Rodden Resp. Report at 10.) Dr. Duchin reports -0.2734 (-27.34%), favoring Republicans. Mr. Trende reports 0.020 (2%) based on all statewide 2020 elections, and 0.022 (2.2%) based on all statewide 2016-2020 elections (party advantage unspecified).

FF24. As Dr. Chen stated in *LWV II*, mean-median values should fall within 0-3% due to the political geography of the Commonwealth favoring Republicans. All of the maps do so here.

FF25. The slight deviations from map to map, all within a few percentage points is not significant to disregard any particular map because it has an overly partisan mean-median calculation.

FF26. Dr. Duchin's mean-median numbers for HB 2146, Reschenthaler Plan 1, Reschenthaler Plan 2, Citizen Voters Plan, Voters of PA Plan, and Senate Democratic Caucus Plan 1 are such extreme outliers that the Court finds them to be not credible. As such none of Dr. Duchin's numbers in the mean-median metric can be considered.

2. Efficiency Gap

FF1. Like the mean-median values, the experts provide a range of numbers relating to the efficiency gap for the various plans, although most likewise fall within the variation that Dr. Warshaw described as normal in *LWV II*. *See LWV II*, 178 A.3d at 777 (Dr. Warshaw noting that the range of efficiency gaps is between -20% and +20% over 96% of the time, and between -10% and +10% approximately 75% of the time).

FF2. The data sets identified above with respect to mean-median values are the same data sets the experts used in reporting efficiency gap figures.

FF3. The following figures are taken from the expert reports of Dr. DeFord, Dr. Duchin, Dr. Barber, Dr. Caughey, and Sean Trende. (*See* DeFord Resp. Report at 15, 34; Duchin Response Report at 4; Barber Response Report at 21; Caughey Resp. Report at 22; Trende Report at 24.)

a. Carter Plan

FF4. For the Carter Plan, Dr. Barber reports an efficiency gap of 0.034 (3.4%), favoring Democrats. Dr. DeFord reports -0.004 (-0.4%), favoring Republicans. Dr. Duchin reports -0.0058 (-0.58%), favoring Republicans.

b. Gressman Plan

FF5. For the Gressman Plan, Dr. Barber reports an efficiency gap of 0.034 (3.4%), favoring Democrats. Dr. DeFord reports 0.008 (0.8%), favoring Democrats. Dr. Duchin reports 0.1394 (13.94%), favoring Democrats.

c. Governor's Plan

FF6. For the Governor's Plan, Dr. Barber reports an efficiency gap of 0.034 (3.4%) favoring Democrats. Dr. DeFord reports 0.006 (0.6%), favoring Democrats. Dr. Duchin reports 0.1007 (10.07%), favoring Democrats. Dr. Caughey reports 0.035, (3.5%), favoring Republicans. Mr. Trende reports -0.035 (-3.5%) based on all statewide 2020 elections, and -0.010 (-1.0%) based on all statewide 2016-2020 elections (party advantage unspecified).

d. HB 2146

FF7. For HB 2146, Dr. Barber reports an efficiency gap of -0.025 (-2.5%), favoring Republicans. Dr. DeFord reports -0.063 (-6.3%), favoring Republicans. Dr. Duchin reports -0.8336 (-83.36%), favoring Republicans. Dr. Caughey reports 0.066 (6.6%), favoring Republicans.

e. Senate Democratic Caucus 1 Plan

FF8. For the Senate Democratic Caucus 1 Plan, Dr. Barber reports an efficiency gap of -0.025 (-2.5%), favoring Republicans. Dr. DeFord reports -0.025 (-2.5%), favoring Republicans. Dr. Duchin reports -0.2601 (-26.01%), favoring Republicans. Dr. Caughey reports 0.023 (2.3%), favoring Republicans.

f. Senate Democratic Caucus 2 Plan

FF9. For the Senate Democratic Caucus 2 Plan, Dr. Barber reports an efficiency gap of 0.034 (3.4%), favoring Democrats. Dr. DeFord reports 0.010

(1%), favoring Democrats. Dr. Duchin reports 0.1221 (12.21%), favoring Democrats. Dr. Caughey reports 0.024 (2.4%), favoring Republicans.

g. House Democratic Caucus Plan

FF10. For the House Democratic Caucus Plan, Dr. Barber reports an efficiency gap of 0.093 (9.3%), favoring Democrats. Dr. DeFord reports 0.033 (3.3%), favoring Democrats. Dr. Duchin reports 0.1814 (18.14%), favoring Democrats.

h. Resenthaler 1 Plan

FF11. For the Resenthaler 1 Plan, Dr. Barber reports an efficiency gap of -0.025 (-2.5%), favoring Republicans. Dr. DeFord reports -0.078 (-7.8%), favoring Republicans. Dr. Duchin reports -1.1024 (-110.24%), favoring Republicans.

i. Resenthaler 2 Plan

FF12. For the Resenthaler 2 Plan, Dr. Barber reports an efficiency gap of -0.025 (-2.5%), favoring Republicans. Dr. DeFord reports -0.078 (-7.8%), favoring Republicans. Dr. Duchin reports -1.1042 (-110.42%), favoring Republicans. Dr. Caughey reports 0.063 (6.3%), favoring Republicans. Dr. Caughey noted that he reviewed the Resenthaler 2 Plan, rather than the Resenthaler 1 Plan, because it was the only one that was provided to him. (N.T. at 897-98.)

j. Draw the Lines Plan

FF13. For the Draw the Lines Plan, Dr. Barber reports an efficiency gap of 0.034 (3.4%), favoring Democrats. Dr. DeFord reports -0.016 (-1.6%), favoring Republicans. Dr. Duchin reports -0.1678 (-16.78%), favoring Republicans.

k. Ali Plan

FF14. For the Ali Plan, Dr. Barber reports an efficiency gap of 0.034 (3.4%), favoring Democrats. Dr. DeFord reports -0.027 (-2.7%), favoring Republicans. Dr. Duchin reports -0.3166 (-31.66%), favoring Republicans.

l. Citizen-Voters Plan

FF15. For the Citizen-Voters Plan, Dr. Barber reports an efficiency gap of 0.034 (3.4%), favoring Democrats. Dr. DeFord reports -0.026 (-2.6%), favoring Republicans. Dr. Duchin reports -0.4074 (-40.74%), favoring Republicans.

m. Voters of PA Plan

FF16. For the Voters of PA Plan, Dr. Barber reports an efficiency gap of -0.025 (-2.5%), favoring Republicans. Dr. DeFord reports -0.048 (-4.8%), favoring Republicans. Dr. Duchin reports -0.5658 (-56.58%), favoring Republicans. Mr. Trende reports 0.030 (3%) based on all statewide 2020 elections, and 0.056 (5.6%) based on all statewide 2016-2020 elections (party advantage unspecified).

FF17. Although the majority of these figures are within a relatively consistent range, the Court notes that Dr. Duchin's reported efficiency gap numbers are extreme outliers, and so far exceed the figures reported by all other experts that the Court does not find them credible and, therefore, the Court cannot consider any of the numbers she submitted in this metric.

FF18. Dr. Warshaw noted in *LWV II* that 75% of the time, efficiency gap falls between -10% and 10%. Dr. Warshaw stated that the efficiency gap should be fairly close to zero. *LWV II*, 178 A.3d at 777. No map has an efficiency gap over 10%.

FF19. Therefore, all of the maps are within a reasonable and acceptable range.

FF20. We also consider Dr. Barber’s calculation in determining what is a fair map.

FF21. Dr. Barber compared his calculations in percentiles for where these maps were in relation to his 50,000 simulated maps.

FF22. All of the maps, according to Dr. Barber, are at least 54% more favorable to Democrats than the simulated maps he calculated. (Barber Report at 21.) The Court finds this opinion credible because we find he used commonly used measures of redistricting fairness.

FF23. According to Dr. Barber, the map proposed by the House Democratic Caucus has a more favorable efficiency gap outcome for Democrats than 100% of his simulated maps. (Barber Report at 21.) The Court finds this opinion credible because Dr. Barber used commonly used measures of measuring redistricting fairness.

3. Other Partisan Considerations

a. Proportionality Is Not a Requirement or Goal of Redistricting

As clearly stated by the Pennsylvania Supreme Court, in analyzing constitutional criteria for legislative redistricting, “[t]he constitutional reapportionment scheme does not impose a requirement of balancing the representation of the political parties; it does not protect the ‘integrity’ of any party’s political expectations. Rather, the construct speaks of the ‘integrity’ of political subdivisions, which bespeaks history and geography, not party affiliation or expectations.” *Holt I*, 67 A.3d at 1235-36.

Neutral criteria explicitly provided for by the Constitution cannot be subordinated to partisan concerns or considerations. *See Holt I*, 67 A.3d at 1239; *see also LWV II*, 178 A.3d at 816-17. A plan which prioritizes the neutral criteria incorporated by *LWV II* from the Pennsylvania Constitution—equal population, compactness, and avoidance of county, municipality, and ward splits unless absolutely necessary—might not result in a proportional congressional delegation due to the spatial dispersion of the political groups throughout the state. (Rodden Report at 9; Barber Report at 5-8, N.T. at 506-10, 627-28; Duchin testimony, N.T. at 441-42 (“in Pennsylvania, there is a structural advantage towards Republicans and getting to better partisan fairness does require you to overcome that”).

If a plan prioritizes proportional election outcomes, like negating a natural geographic disadvantage to achieve proportionality at the expense of traditional redistricting criteria, such map will violate the Pennsylvania Constitution’s Free and Equal Elections Clause. The U.S. Supreme Court in *Vieth*, a Pennsylvania redistricting case, stated that “[t]he Constitution provides no right to proportional representation.” 541 U.S. at 268, 288 (emphasis added). “It guarantees equal protection of the law to persons, not equal representation . . . to equivalently sized groups. It nowhere says that farmers or urban dwellers, Christian fundamentalists or Jews, Republicans or Democrats, must be accorded political strength proportionate to their numbers.” *Id.* at 288 (emphasis added).

Dr. Wasserman, a renowned nonpartisan redistricting expert, noted developing a congressional map that provides proportional election outcomes, in Pennsylvania at least, “requires conscious pro-Dem[ocrat] mapping choices.”

(House Republican Intervenors’ Br. at 22 (citing <https://twitter.com/redistrict/status/965719652188991488> (tweet dated 2/29/2018))).

CL1. In light of this, the Court recognizes that proportionality is not a requirement or a goal of redistricting under federal or state law.

FF1. Thus, any plan that attempts to achieve proportionality and does not comply with traditional redistricting criteria must be disregarded.

FF2. The Gressman Plan was purposefully created using an algorithm that sought to optimize on partisan fairness. *See* Gressman Pet’rs’ Br. at 14.

FF3. The Draw the Lines Plan **admittedly** split Pittsburgh into two congressional districts to maximize political competitiveness. (Villere Report at 4.)

b. Protection of Incumbents

CL1. Although it is not a constitutionally required, or necessarily dispositive consideration, among the factors that a court may consider in evaluating a redistricting plan is the extent to which it protects incumbents from competing against each other. *See LWV II*, 178 A.3d at 817 (listing “protection of incumbents” among the factors that “historically played a role in the drawing of legislative districts” which may be considered but are “wholly subordinate” to the neutral factors of compactness, contiguity, population equality, and minimization of the division of political subdivisions); *Mellow*, 607 A.2d at 207 (listing the avoidance of contests between incumbents as a legitimate objective in districting).

FF1. Notably, because Pennsylvania has lost one seat in the U.S. House of Representatives, one set of incumbents necessarily must be paired in a single district. (N.T. at 240 (testimony of Dr. DeFord), 348-49 (testimony of Dr. Duchin).)

FF2. The decision of where to create an incumbent pairing, however, can be relevant in assessing whether a proposed plan favors one political party over another. Pairing incumbents necessarily forces them to compete for a single seat. (N.T. at 348 (testimony of Dr. Duchin).)

FF3. It follows that a proposed plan may be able to favor one party by pairing incumbents from the other party, effectively eliminating one of them. (N.T. at 240 (testimony of Dr. DeFord), 349 (testimony of Dr. Duchin).)

FF4. In practice, however, an important consideration in the present proposals is that two of Pennsylvania's current Representatives are not seeking reelection. Representative Conor Lamb (D), of the current 17th District, is running for a seat in the U.S. Senate, and is therefore not running for reelection. Representative Michael Doyle (D), of the current 18th District, is retiring and not seeking reelection.

FF5. Accordingly, proposed plans that pair one of those incumbents with another, or with each other, are less indicative of any unfair distribution of the burden of incumbent pairing.

FF6. Not all of the Parties and *Amici* have discussed incumbent pairing in their submissions or supporting expert reports.

FF7. Dr. DeFord, however, compared all of the proposed plans to evaluate the number of incumbent pairings in each. (DeFord Resp. Report at 21, 39.) Thus, to the extent that a Party does not identify incumbent pairings, the Court will consider Dr. DeFord's report.

FF8. The Gressman Plan includes no significant incumbent pairings. Although its single necessary pairing places Representative Conor Lamb (D) into a

district with Representative Guy Reschenthaler (R), Representative Lamb is not seeking reelection, rendering this pairing insignificant. (DeFord Resp. Report at 21.)

FF9. The Carter Plan, HB 2146, the Senate Democratic Caucus 1 Plan, and the Reschenthaler 2 Plan all have one significant pairing.

FF10. The Carter Plan places Representatives Fred Keller (R) and Glenn Thompson (R) within a single district. (Rodden Report at 23.)

FF11. Although the Carter Plan also places Representatives Lamb and Doyle in the same district, neither are seeking reelection. (DeFord Resp. Report at 21.)

FF12. HB 2146 pairs Representatives Daniel Meuser (R) and Matthew Cartwright (D) into a single district.

FF13. Although HB 2146 places Representatives Lamb and Doyle in a single district, neither are seeking reelection. (DeFord Resp. Report at 21.)

FF14. The Senate Democratic Caucus 1 Plan places Representatives Meuser (R) and Keller (R) into a single district. (DeFord Resp. Report at 21.)

FF15. The Reschenthaler 2 Plan places Representatives Keller (R) and Cartwright (D) into in a single district. (DeFord Resp. Report at 21.)

FF16. The remaining plans all have two significant pairings.

FF17. However, among those plans, several stand out as pairing more incumbents from one party than another.

FF18. The Senate Democratic Caucus Plan 2 pairs Representatives Brian Fitzpatrick (R) and Brendan Boyle (D) in a single district, along with Representatives Meuser (R) and Keller (R). (DeFord Resp. Report at 21.)

FF19. Dr. DeFord cited the Senate Democratic Caucus Plan 2 as an example of one that particularly favors Democrats, as three Republican incumbents

are paired with another incumbent, but only one Democrat is so paired. (N.T. at 241.)

FF20. The Reschenthaler 1 Plan pairs Representatives Keller (R) and Cartwright (D) into a single district, along with Representatives Mary Scanlon (D) and Chrissy Houlahan (D). (DeFord Resp. Report at 21.)

FF21. Dr. DeFord cited the Reschenthaler 1 Plan as an example of one that particularly favors Republicans, as it pairs three Democratic incumbents, but only one Republican. (N.T. at 241.)

FF22. The same imbalance appears in the House Democratic Caucus's two Plans, which pair Representatives Meuser (R) and Cartwright (D), along with Representatives Scott Perry (R) and Lloyd Smucker (R). (DeFord Resp. Report at 21.)

FF23. This is another example of a plan that favors Democrats by pairing three Republican incumbents, but only one Democrat incumbent.

FF24. Likewise, the Draw the Lines Plan pairs Representatives Fitzpatrick (R) and Boyle (D), along with Representatives Meuser (R) and Keller (R). (DeFord Resp. Report at 39.)

FF25. This plan, thus, also favors Democrats by pairing three Republican incumbents but only one Democrat.

FF26. By contrast, the Citizen-Voters Plan favors Republicans by pairing Representatives Scanlon (D) and Dean (D), along with Representatives Meuser (R) and Cartwright (D)—three Democratic incumbents but only one Republican incumbent. (DeFord Response Report at 39.)

FF27. In sum, as it concerns incumbent protection, the Gressman Plan appears to have zero significant pairings, followed by HB 2146, the Reschenthaler

2 Plan, the Carter Plan, and the Senate Democratic Caucus 1 Plan, all of which include one significant pairing.

FF28. The remaining plans are largely on equal footing, but the Senate Democratic Caucus 2 Plan, the House Democratic Caucus Plan, the Draw the Lines Plan, the Reschenthaler 1 Plan, and the Citizen-Voters Plan have three incumbent pairings and as such will be given less weight in this regard.

c. VRA Considerations

FF1. Many Parties specify the number of districts in their proposed plans in which racial or language minority make up a majority of the voting-age population, so as to guard against potential liability under section 2 of the VRA.

FF2. Although not all of the Parties and *Amici* specifically identify the number of majority-minority districts created by their proposed plans, Dr. DeFord analyzed each proposal to identify the number of districts in which a majority of the voting-age population would constitute a minority. (DeFord Resp. Report at 20, 38.)

FF3. The 2018 Remedial Plan contained two majority-minority districts—one majority-Black district and one in which multiple minorities together formed a majority. (Duchin Report at 5.)

FF4. The Gressman Plan is the only plan that creates three majority-minority districts. Its proposed Districts 2, 3, and 5 have minority group populations of 52%, 57%, and 51%, respectively. (DeFord Report at 44.) In one of those districts, Latinos would be the largest minority group, which differs from previous districting plans. (DeFord Report at 56-57.)

FF5. All of the remaining proposed plans would create two majority-minority districts. (DeFord Resp. Report at 20, 38.)

FF6. All of the remaining proposed plans are therefore comparable with the 2018 Remedial Plan with respect to the creation of majority-minority districts.

CL1. As noted above, Pennsylvania is subject to section 2 of the VRA. However, the Parties have not presented evidence or expert opinions specifically directed toward the establishment of the *Gingles* requirements with respect to any particular minority population in Pennsylvania. Moreover, this is not a situation in which a party has lodged a challenge to an existing districting plan under section 2 of the VRA.

CL2. The Court is thus unable to determine that any specific number of majority-minority districts is strictly necessary in any particular location in Pennsylvania.

CL3. The Court accordingly cannot conclude that any plan would be likely to violate section 2 of the VRA or any other requirements of federal law.

d. The Carter Plan's Least Change Approach

CL1. The preservation of prior district lines, or “least change,” is another “subordinate” factor the Court may consider in determining which plan to adopt. *LWV II*, 178 A.3d at 817.

CL2. In *LWV II*, the Pennsylvania Supreme Court held that “the preservation of prior district lines” is a consideration that is “wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts. *LWV II*, 178 A.3d at 817.

FF1. In his report and testimony, Dr. Rodden, the expert witness for the Carter Petitioners, prioritized, to a remarkable extent, the preservation of the cores and boundaries of the 2018 Remedial Plan. (Rodden Report at 1; N.T. at 84.)

CL3. The Court finds that using least-change metrics here is of limited utility because an 18-district plan is being replaced by a 17-district plan.

CL4. The Court concludes that evaluating redistricting plans against the traditional criteria, instead of similarity to a previous court-drawn plan, protects the integrity of the redistricting process by ensuring that the new plan is scrutinized every redistricting cycle against the applicable constitutional and statutory standards, and with reference to population and other changes.

FF2. Dr. Rodden states that the Carter Petitioners’ “Least Change” Plan deviates the least amount from the 2018 Remedial Plan adopted by the Supreme Court in *LWV III*. (Rodden Resp. Report at 2.)

FF3. According to Dr. Rodden, the Carter Plan retains 86.6% of the population share as compared to the Supreme Court-drawn 2018 Remedial Plan. He also provides calculations on the other submitted maps in Table 1 of his Response Report:

1: Retained Population Share in 14 Submitted PA Congressional Plans

Plan	Retained Population Share
Carter	86.6
CCFD	76.1
Citizen Voters	82.4
HB2146	78.5
Draw the Lines PA	78.8
GMS	72.8
Governor Wolf	81.2

Ali	81.5
PA House Dem. Caucus	73.3
Reschenthaler 1	76.5
Reschenthaler 2	76.5
Senate Dem. Plan 1	72.5
Senate Dem. Plan 2	72.5
<u>Voters of PA</u>	<u>80.6</u>

(Rodden Resp. Report at 2.)

FF4. Dr. Rodden calculated the average retained population share across all of the districts (in percentages) in each of the other plans, and reported a single percentage figure for each of the plans, as opposed to a breakdown by district for each plan like he did with the Carter Plan. (Rodden Resp. Report at 1-2, Table 1.)

FF5. Based on his review of the other plans' numbers, Dr. Rodden opined that the Carter Plan retained more of the districts' former population (86.6%) compared to the other 13 plans (which ranged from 72.5% to 82.4%). (Rodden Resp. Report at 2, Table 1.)

FF6. Dr. Rodden further opined that the Senate Democratic Caucus's Plans 1 and 2 (72.5% for both), the Gressman Petitioners' Plan (72.8%), and the House Democratic Caucus's Plan (73.3%) made the largest boundary changes, and thus had the lowest percentages, with respect to maintaining districts' population as compared to the 2018 Remedial Plan. (Rodden Resp. Report at 2, Table 1.)

FF7. Dr. Rodden does not explain the extent to which the percentages of retained population share is either acceptable or so disparate so as to justify the elimination of any of the other plans or conversely to prioritize the Carter Plan based on this criterion. Consequently, this Court is left with attempting to decipher enigmatic data.

CL5. The Court concludes that choosing a plan based on its similarity to a previously court-drawn redistricting plan is not constitutionally sound.

CL6. The 2018 Remedial Plan adopted by the Supreme Court in *LWV III* was based on 2010 Census data.

CL7. The Court concludes that the 2020 U.S. Census results have made the current plan, *i.e.*, the 2018 Remedial Plan, unusable and violative of voters' rights due to population reductions and shifts resulting in unequal districts.

FF8. The Carter Plan's decrease along some compactness measures results from efforts to deviate the least amount from the 2018 Remedial Plan. *See* Rodden Report at 22.

FF9. The Carter Plan opted to draw less compact districts instead of disrupting the Supreme Court's 2018 Remedial Plan. *Id.* at 8.

CL8. The Court concludes that nothing in *LWV* or the Constitution states that adherence to a previous **court-drawn** plan outweighs compactness.

CL9. The "Least Change" doctrine was set forth by the U.S. Supreme Court in *Perry v. Perez*, 565 U.S. 388, 392-397 (2012), suggesting judges should use maps drawn **by legislators** as strong indicators of **legislative intent** and should strive to alter them as little as possible.

CL10. Specifically, the U.S. Supreme Court held that it was error for a district court to displace "legitimate state policy judgments with the court's own preference" by neglecting a recently enacted, but not Department of Justice-precleared, legislative redistricting plan. 565 U.S. at 396. In so holding, the U.S. Supreme Court stated that "a district court should take guidance from the state's recently enacted plan" when drafting its own plan, since the state's plan "provides important guidance that helps ensure that the district court appropriately confined

itself to drawing interim maps that comply with the Constitution and the Voting Rights Act, without displacing legitimate state policy judgments with the court's own preferences." 565 U.S. at 394.

CL11. This Court concludes that the "Least Change" doctrine does not require, or sanction, a court to defer to **its own** prior redistricting map in drafting the new plan.

CL12. The U.S. Supreme Court has held that districts should reflect legislative intent to the highest degree which is statutorily and constitutionally permitted. Nothing in *Perry* suggests that a court, when drafting its own plan, should adhere to a plan **it** previously drew.

CL13. The Pennsylvania Supreme Court rejected a similar Least Change argument in legislative reapportionment litigation in *Holt I*, reiterating that "the governing 'law' for redistricting" is "applicable constitutional and statutory provision and on-point decisional law," not "the specifics of a prior reapportionment plan 'approved' by the Court." *Holt I*, 28 A.3d at 735.

CL14. In *Holt I*, the Pennsylvania Supreme Court again criticized arguments about the "supposed constitutionalization of prior redistricting plans" and emphasized the "limited constitutional relevance" of maintaining the outcomes of previous plans. *Holt I*, 67 A.3d at 1236.

FF10. The Court finds that the Carter Petitioners, in essence, have attempted to elevate a subordinate factor into a dominate one and therefore their plan and map violate the Free and Equal Elections Clause as a matter of law.

CL15. The Court concludes that the Carter Petitioners have misconstrued and misapplied the "Least Change" doctrine, which does not apply in this circumstance.

FF11. This Court is deeply troubled by the prospect of any court, let alone a court of this Commonwealth, applying the “Least Change” doctrine, where the existing plan was drafted by that court itself, because that court could theoretically continuously adopt features of its prior plans, effectively rendering impossible any future challenge to the plan.

FF12. The Court concludes that any number of **the court’s** choices from its prior plan would be frozen into future plans, which has nothing to do with applying constitutional redistricting principles to ever changing population changes.

CL16. This Court concludes that by applying the “least change” approach in these circumstances, a court would be prioritizing the court’s own 2018 Remedial Plan, which was adopted four years ago, which was based on the 2010 U.S. Census data.

CL17. For these reasons, this Court recommends that the Supreme Court not adopt the Carter Petitioners’ “Least Change” Plan on the basis that, comparatively, it is most similar to the 2018 Remedial Plan’s boundary lines for the congressional districts in the Commonwealth.

VI. RECOMMENDATION

A. Proposed Findings of Fact, Conclusions of Law, and Adoption of Map Recommendation

To start, the Court incorporates through reference its proposed findings of fact and conclusions of law as made previously and reflected above. In an attempt to synthesis and consolidate those determinations and, in support of its proposed report and recommendation to the Supreme Court, the Court, having conducted a bench trial in which it received evidence from the parties, has rendered credibility

and weight determinations with respect to and in light of its previously suggested findings of fact and conclusions of law.⁴⁷ Based on those credibility and weight determinations, as more fully explained below, the Court recommends that the Supreme Court ultimately adopt the following findings of fact, conclusions of law, and/or mixed findings of fact and conclusions of law:⁴⁸

1. The Petitions for Review filed in this consolidated case by the Carter Petitioners and the Gressman Petitioners generally allege that the Supreme Court's 2018 Remedial Plan is unconstitutional as a result of the recent 2020 Census because the 2018 Remedial Plan was based on data collected from the 2010 Census.
2. More specifically, the Petitions for Review correctly aver that the Commonwealth of Pennsylvania is currently allotted 17 seats in the House of Representative, while under the 2010 Census, it was bestowed with 18 seats and, therefore, the 2018 Remedial Plan is presently unconstitutional in that it fails to reflect the Commonwealth's population loss and/or boundary lines that account for the lost seat.
3. As a matter of fact and law, the Court concludes that the 2018 Remedial Plan is constitutionally deficient and cannot be implemented to represent the

⁴⁷ Generally speaking, in making credibility and weight determinations, a tribunal resolves conflicts in the evidence and may accept or reject the testimony of any witness, including an expert witness, in whole or in part, and is free to reject even uncontradicted testimony as not being credible. *See, e.g., A & J Builders, Inc. v. Workers' Compensation Appeal Board (Verdi)*, 78 A.3d 1233, 1238 (Pa. Cmwlth. 2013); *Kelly v. Unemployment Compensation Board of Review*, 776 A.2d 331, 336 (Pa. Cmwlth. 2001); *Teitell v. Unemployment Compensation Board of Review*, 546 A.2d 706, 711 (Pa. Cmwlth. 1988); *see also supra* note 25 (explaining the standard of review and the posture of this case as it pertains to the functional role that it is typically associated with a fact finder).

⁴⁸ The United States Supreme Court has described a mixed question of law and fact as one in which the facts are established, the law is determined, but the issue involves whether the facts were correctly applied to the law. *Pullman-Standard v. Swint*, 456 U.S. 273, n.19 (1982).

congressional districts for the Commonwealth from this moment forward because it created boundary lines for 18 congressional districts and seats, and the Commonwealth now has only 17 available seats.

4. Given the procedural history and posture of this case, including interim orders from our Supreme Court, it is apparently an unremarkable and undisputed proposition that the 2018 Remedial Plan violates at least one of various constitutional provisions and, as such, the creation and adoption of a new congressional redistricting map is an absolute imperative as a matter of state law.

5. Under Pennsylvania law, and the Constitutions of the United States and Pennsylvania, it is the responsibility of the Pennsylvania legislature to duly enact a law incorporating a map that indicates the specific boundary lines for each respective congressional district that the Commonwealth has been afforded according to the most recent Census, subject to approval by the governor.

6. Here, the Governor took initiative, apart from the statutory and constitutional procedure for enacting a law. *See* Article IV, section 15 of the Pennsylvania Constitution, Pa. Const. art. IV, §15 (“Every bill which shall have passed both Houses shall be presented to the Governor; if he approves he shall sign it, but if he shall not approve he shall return it with his objections to the House in which it shall have originated . . .”).

7. In September 2021, the Governor issued an Executive Order creating the Pennsylvania Redistricting Advisory Council (Advisory Council), a six-member council comprised of redistricting experts formed to provide guidance to the Governor and assist his review of any congressional redistricting plan passed by the General Assembly. (Governor Opening Brief at 4.)

8. The Governor’s Advisory Council drafted a set of so-called “Redistricting Principles.” See Pennsylvania Redistricting Advisory Council, Redistricting Principles, <https://www.governor.pa.gov/wp-content/uploads/2021/11/Redistricting-Advisory-CouncilFinal-Principles.pdf>

9. On January 15, 2022, the Governor published on his website “the Governor’s Map” proposing new congressional district boundaries, which he claimed were consistent with the United States and Pennsylvania Constitutions and with the redistricting principles recommended by the Redistricting Advisory Council. <https://www.governor.pa.gov/congressional-districts-map-proposals>

10. Although both the Pennsylvania State House of Representatives and Senate (collectively, the General Assembly), the policy-making branch of our government, devised, considered, and passed a bill, HB 2146, that accomplished this goal, the Governor vetoed it on January 26, 2022.

11. The Governor vetoed HB 2146 because, in his view, “it fundamentally fails to meet the test of fairness set forth by the Pennsylvania Supreme Court in *League of Women Voters I* and does not comply with the Redistricting Principles outlined by the Redistricting Advisory Council.” (Governor Wolf Opening Brief at 6.)

12. Upon review of the evidence of record, the Court has already concluded that HB 2146 does not contravene, and in fact sufficiently satisfies, the standards of the Free and Equal Election Clause of the Pennsylvania Constitution, the other criteria discussed by our Supreme Court in *LWV*, and further, reflects a non-partisan tilt in favor of Democrats.

13. As of the filing date of this report and recommendation, February 7, 2022, the General Assembly and the Governor have not agreed upon a congressional redistricting plan to replace the 2018 Remedial Plan.

14. Ergo, this Court, as part of the judicial branch of government, and pursuant to the directives of our Supreme Court, has collected evidence and held a hearing in order to recommend a plan and/or map to serve as a substitute for the breakdown in the political process.

15. In the context of this consolidated case, there were 13 maps submitted by the parties and *amici* for the Court's review and consideration.

16. On their face, and as supported by the evidence of record, all the maps in the proposed plans contain districts that are comprised within a contiguous territory and comply with the "contiguity" requirement of the Pennsylvania Constitution.

17. Each and every proposed plan satisfies the command in the Free and Equal Elections Clause that congressional districts be created "as nearly equal in population as practicable." Pa Const. art. II, §16.

18. However, unlike the other plans that have a maximum population deviation of one person, the Carter Plan and the House Democratic Plan both result in districts that have a two-person deviation.

19. The Ali Plan, unlike all of the other maps submitted, and contrary to Pa. House Res. 165, relied on the LRC's Data Set #2 and, for the reasons, findings, and conclusions stated above and below, the Court must recommend that the Ali Plan is thus entitled to little or no evidentiary weight and does not proffer a map that is suitable for redistricting, or for comparison with the other submitted maps.

20. Given the credible testimony of all the experts who testified or tendered reports regarding this aspect of the Ali Plan, the Court finds that the plan most likely alters population density and raises a host of subsidiary issues that should be resolved by the federal or state legislature and hence cannot be utilized for comparison of the other parties and *amici* maps submitted in this case.

21. The Court notes that the Ali Plan was the only plan whose map's entire construction depended upon the population figures as set forth in Data Set #2 and seeks to alter the requirement in a resolution, Pa. House Res. 165, stating that Data Set #1 be used in any congressional redistricting legislation before the 2030 Census. All the other parties and *amici* utilized and relied upon LRC's Data Set #1 in accord with the commonly accepted practice in the expert field of redistricting and, in essence, Ali is asking the Court to make a determination regarding geographical breakdowns in population which is not properly before the Court.

22. Based on the credible testimony and charts provided by Governor Wolf's expert, Dr. Duchin, regarding the metrics used to evaluate compactness, as corroborated by various other experts in their testimony and submissions, the Court finds that the following plans and maps fulfill the constitutional requirement that a map be composed of compact territory: the Republican Legislative Intervenors' Plan (HB-2146), both of the Congressional Intervenors' maps (Reschenthaler 1 and 2), the Carter Petitioners' Plan, the Gressman Petitioners' Plan, Governor Wolf's Plan, both of the Senate Democratic Caucus Plans (Maps 1 and 2), and the maps submitted by the Voters of PA *Amici*, Draw the Lines *Amici*, and the Citizen-Voters *Amici*.

23. Overall, the plans which divide the fewest counties, cities, incorporated towns, boroughs, townships, and wards are the Senate Democratic Caucus Map 2 (46 splits total), the Republican Legislative Intervenors' Map (HB 2146) and the Gressman Plan, (each with 49 splits total), the Reschenthaler 2 Plan (53 splits), and the Reschenthaler 1 Plan (54 splits).

24. The Reschenthaler Plans remarkably divide only 13 counties and 16 municipalities, which is the lowest numbers in both categories.

25. In reviewing the number of splits, the Court is mindful that is not simply a numbers game and that a boundary divide, first and foremost, must be done to guarantee equality in population, second (and most relatedly), should preserve the commonality of the interests of the communities and, third, should not be done to achieve an ulterior motive, such as racial discrimination or unlawful partisan gerrymandering.

26. That said, the following plans propose to split the City of Pittsburgh into two districts, apparently for the first time in history of the Commonwealth: the Governor’s Plan, the Senate Democratic Caucus Plan 1 and Plan 2, the Draw the Lines PA Plan, and the plan submitted by Khalif Ali.

27. However, upon review of the record, the Court determines that these parties have failed to present any credible evidence as to why it was “necessary” to split the second largest city in Pennsylvania in order to achieve equal population, especially considering that such an approach is seemingly a novel proposition, and experts credibly testified that there was no legitimate rationale or reason to apportion the city into two separate segments.

28. Given the weight it has afforded the evidence, the Court expresses grave concerns that the maps dividing the City of Pittsburgh do so with the objective of obtaining an impermissible partisan advantage, by effectively attempting to create *two* Democratic districts out of *one* traditionally and historically Democratic district.

29. The Court further finds, based on the credible evidence of record that, by dividing the City of Pittsburgh into two districts, the above-mentioned maps have failed preserve the shared interest of the communities in the Pittsburgh area and the distinctive cultural fabric that has been shaped and formed within the city’s limits.

30. Therefore, the Court respectfully recommends that the above-mentioned maps are not, as a matter of comparative evidentiary weight, an appropriate choice to represent Pennsylvania's congressional districts in upcoming elections because they divide the City of Pittsburgh.

31. The Court further respectfully recommends that any map that divides Bucks County for the first time since the 1860s, including Governor Wolf's map, is not an appropriate choice to represent Pennsylvania's congressional districts in upcoming elections. In so determining, the Court credits and provides great weight to the unrefuted testimony of Dr. Naughton who, as explained more fully below, opined that Bucks County should not be split into two congressional districts.

32. Regarding the issue of incumbent pairings, the Court finds and places persuasive weight on the fact that, contrary to every other map submitted, the Senate Democratic Caucus 1 Plan and the Carter Plan include two Republican incumbents in one congressional district, which effectively eliminates a Republican from continued representation in the United States House of Representatives.

33. As such, although Pennsylvania has already lost one congressional seat as a result of decreased population, the Senate Democratic Caucus 1 Plan and the Carter Plan, in effect, seek to preemptively purge a Republican Congressman from the 17 seats that are remain available for office.

34. Viewing the record as a whole, the Court finds that the plan submitted by the Carter Petitioners is given less weight in that it utilizes the "least change" analysis, and the underlying methodology and methods employed by Dr. Rodden to construct the proposed maps based on the 2018 map which was based on an entirely different census population and 18 versus 17 districts, and contrary to Pennsylvania and United States Supreme Court precedent.

35. Consequently, any figures, features, or characteristics in the Carter Petitioners' plan and map that could possibly be deemed to support the validity of that plan and map have been developed in contravention of controlling precedent.

36. Based on the current record, and caselaw and when considered alongside and constructively with the other maps, the Court simply cannot conclude that the Carter Petitioners' map is otherwise entitled to a degree of evidentiary weight such that it outweighs, by a preponderance, the evidentiary value of the other, proposed maps. As such, for this reason and those stated within, the Court must recommend that the Carter Petitioners' map be given less evidentiary weight in its global assessment of all the plans and proposals.

37. Upon review, the Court finds credible and extremely persuasive the various experts' testimonies and reports explaining that there is a strong relationship between the geographic concentration of Democratic voters and electoral bias in favor of Republicans.

38. Particularly, Dr. Duchin, Governor Wolf's expert, confirmed that the political geography of Pennsylvania is partisan by its very nature. Dr. Duchin testified, credibly, that in generating 100,000 random plans with a computer programmed that was designed only to honor Pennsylvania's minimum constitutional requirements, the random plans tended to exhibit a pronounced advantage to Republicans across the full suite of elections, throughout the Commonwealth as a whole, and that random plans must naturally and necessarily favor Republicans.

39. Indeed, in terms of the metrics used to gauge partisan fairness, the mean-median scores provided by each and every expert with respect to each and every single district of the various maps confirms that an overwhelming supermajority of the maps possess a notable difference that favor Republicans and, thus, confirms the

natural state of political voting behavior and tendencies in the entirety of the Commonwealth with respect to congressional districting.

40. On record as presented, the Court finds that when lines are purposely drawn to negate a natural and undisputed Republican tilt that results from the objective, traditional, and historical practice whereby Democratic voters are clustered in dense and urban areas, such activity is tantamount to intentionally configuring lines to benefit one political party over another. The Court considers this to be a subspecies of unfair partisan gerrymandering and is legally obligated, pursuant to *LWV II*, to look up such a practice with suspicious eyes.

41. That said, on a comparative scale, the Court gives less weight to the maps that, due to their credited mean-median scores, yield a partisan advantage to the Democratic Party, namely the Gressman Plan and the House Democratic Caucus Plan.

42. Similarly, on a comparative scale, the Court provides less weight to the maps that, due to their credited efficiency gap scores, yield a partisan advantage to the Democratic Party, namely the Carter Plan, the Gressman Plan, the Governor's Plan, the Senate Democratic Caucus 2 Plan, the House Democratic Caucus Plan, and the Draw the Lines Plan.

43. Regardless of whether there was sufficient, credible evidence to establish that any of the other proffered plans violate the Free and Equal Elections clause because they subordinate the neutral factors pronounced in *LWV II* and place unlawful, paramount emphasis on gerrymandering for unfair partisan political advantage, the Court considers the degree of partisan fairness reflected within the maps as a substantial factor that is entitled to appreciable weight in the final calculus.

44. In so doing, the Court notes, as previously explained, one of the overriding constitutional precepts applied in redistricting cases is that any map that prioritizes proportional election outcomes, for example, by negating the natural geographic disadvantage to achieve proportionality at the expense of traditional redistricting criteria, violates the Pennsylvania Constitution’s Free and Equal Elections Clause. As the United States Supreme Court stated in *Vieth v. Jubelirer*, concerning a Pennsylvania redistricting plan, “[t]he Constitution provides no right to proportional representation.” 541 U.S. at 268. Instead, the Constitution “guarantees equal protection of the law to persons, not equal representation . . . to equivalently sized groups. It nowhere says that farmer or urban dwellers, Christian fundamentalists or Jews, Republicans or Democrats, must be accorded political strength proportionate to their numbers.” *Id.* at 288

45. There was insufficient evidence of record to establish that any of the proposed maps violated the Voting Rights Amendment or the “one person, one vote” principle in the Equal Protection clause of the United States Constitution. While voicing no opinion as to the future prospect of such claims, the Court notes that they were not sufficiently developed or argued during the proceedings below.

46. Having received and considered the evidence in the manner of a trial court, the Court has fully vetted the plans and maps to assess their compliance with the neutral criteria of the Free and Equal Elections Clause of the Pennsylvania Constitution, as interpreted and applied in *LWV II*.

47. From this perspective, the Court discounts the plans that it already determined failed to adequately satisfy those criteria, otherwise jeopardized the purposes and goals inherent in the “floor” standard adopted by our Supreme Court, and/or contain

characteristics that render them patently not credible or comparatively deserving of lesser weight.

48. Particularly, the Court submits the following recommendations as to which plans should not be adopted by the Supreme Court and, for support, supplies the accompanying reasons for its specific recommendations:

Ali Plan

Based on all of the foregoing, the Court does not recommend adopting the Ali Plan for the congressional districts in the Commonwealth of Pennsylvania because:

- 1) it relied on the LRC's Data Set #2, which contains population adjustments to account for the reallocation of most prisoners to their last known addresses prior to incarceration, is not based on the figures in Data set #1, and is not in accord with Pa. House Res. 165;
- 2) the Court finds that Data Set #2 should not be used at this time for congressional districting;
- 3) the Plan's adjustments in population, relocating prisoners to their residential addresses, would result in a population deviation of 8,676 people;
- 4) it splits the City of Pittsburgh into two congressional districts for the first time without any convincing or credible expert explanation as to why this was absolutely necessary to achieve population equality or to refute other expert opinions that the City of Pittsburgh does not need to be split in order to achieve population equality between districts;

- 5) the City of Pittsburgh in many ways constitutes a community of interest, such that its division would not be in the best interest of its residents.

Governor Wolf's Plan

Based on all of the foregoing, the Court does not recommend adopting the Governor's map for the congressional districts in the Commonwealth of Pennsylvania because:

- 1) it splits the City of Pittsburgh into two congressional districts for the first time without any convincing or credible expert explanation as to why this was absolutely necessary to achieve population equality or to refute other expert opinions that the City of Pittsburgh does not need to be split in order to achieve population equality between districts;
- 2) the Governor's map also for the first time in 150 years, splits Bucks County, and joins Philadelphia's surplus population with Bucks County. Again, the Governor has not provided any convincing or credible expert explanation as to why this is absolutely necessary to achieve population equality between districts;
- 3) the Governor's Plan splits the City of Pittsburgh in order to create another Democratic congressional district solely for partisan gain by creating another Democratic district;
- 4) the City of Pittsburgh in many ways constitutes a community of interest, such that its division would not be in the best interest of its residents and has never before been split;

- 5) based on its credited efficiency gap score, it provides a partisan advantage to the Democratic party in contravention to the natural state of political voting behavior and bias towards Republicans in Pennsylvania.

The Draw the Lines Plan

Based on all of the foregoing, the Court does not recommend adopting the Draw the Lines Plan for the congressional districts in the Commonwealth of Pennsylvania because:

- 1) like the Governor's Plan, it splits the City of Pittsburgh across two congressional districts for the first time without any convincing or credible expert explanation as to why this was absolutely necessary to achieve population equality or to refute other expert opinions that the City of Pittsburgh does not need to be split in order to achieve population equality between districts;
- 2) the City of Pittsburgh in many ways constitutes a community of interest, such that its division would not be in the best interest of its residents;
- 3) Draw the Lines admittedly split Pittsburgh into two to maximize political competitiveness. *See Villere Report at 4;*
- 4) based on its credited efficiency gap score, it provides a partisan advantage to the Democratic party in contravention to the natural state of political voting behavior and bias towards Republicans in Pennsylvania.

Senate Democratic Caucus Plans 1 or 2

Based on all of the foregoing, the Court does not recommend adopting either Senate Democratic Caucus Plan for the congressional districts in the Commonwealth of Pennsylvania because:

- 1) both Plans split the City of Pittsburgh across two congressional districts for the first time without any convincing or credible expert explanation as to why this was absolutely necessary to achieve population equality or to refute other expert opinions that the City of Pittsburgh does not need to be split in order to achieve population equality between districts;
- 2) the City of Pittsburgh in many ways constitutes a community of interest, such that its division would not be in the best interest of its residents;
- 3) the Senate Democratic Caucus' Plans split Pittsburgh in order to create another Democratic congressional district which appears to be solely for partisan gain by creating another Democratic district;
- 4) without any explicit or apparent justification, it pairs two Republican incumbents in one congressional district and effectively eliminates a Republican from continued representation in the United States House of Representatives;
- 5) based on its credited efficiency gap score, it provides a partisan advantage to the Democratic party in contravention to the natural state of political voting behavior and bias towards Republicans in Pennsylvania

House Democratic Caucus Plan

Based on all of the foregoing, the Court does not recommend adopting the House Democratic Caucus' Plan for the congressional districts in the Commonwealth of Pennsylvania because:

- 1) it was not accompanied by an expert report or testimony consequently, the Court received no testimonial or written explanation concerning why the map drew the lines in the particular manner that it did and to demonstrate why the divides in the maps were absolutely necessary to achieve population equality as opposed to some other secondary or impermissible goal;
- 2) while keeping Pittsburgh whole, as asserted by one of the parties, it draws an oddly shaped "Freddy-Krueger like claw" district in Allegheny County to "grab" Pittsburgh to combine it with Republican areas leaning to the North without any explanation of the reasons for doing so;
- 3) it has a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one person deviation;
- 4) based on both its credited efficiency gap score and credited mean-median score, it provides a partisan advantage to the Democratic party in contravention to the natural state of political voting behavior and bias towards Republicans in Pennsylvania.

The Citizen Voters Plan

Based on all of the foregoing, the Court does not recommend adopting the Citizen Voters' Plan for the congressional districts in the Commonwealth of Pennsylvania because:

- 1) it was not accompanied by an expert report or testimony consequently, the Court received no testimonial or written explanation concerning why the map drew the lines in the particular manner that it did and to demonstrate why the divides in the maps were absolutely necessary to achieve population equality as opposed to some other secondary or impermissible goal;
- 2) it has a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one person deviation.

The Carter Plan

Based on all of the foregoing, this Court does not recommend adopting the Carter Plan for the congressional districts in the Commonwealth of Pennsylvania because:

- 1) it has a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one person deviation;
- 2) it utilized the "least-change" approach, and lacked any analysis of the percentage differences as discussed more fully herein;
- 3) without any explicit or apparent justification, it pairs two Republican incumbents in one congressional district and effectively eliminates a

Republican from continued representation in the United States House of Representatives;

- 4) based on its credited efficiency gap score, it provides a partisan advantage to the Democratic party in contravention to the natural state of political voting behavior and bias towards Republicans in Pennsylvania.

The Gressman Plan

Based on all of the foregoing, this Court does not recommend adopting the Gressman Plan for the congressional districts in the Commonwealth of Pennsylvania because:

- 1) the algorithm used to prepare the Gressman Plan was specifically looking to optimize on partisan fairness, which as explained above, is not one of the traditional neutral criteria of redistricting and because the constitutional reapportionment scheme does not impose a requirement of balancing the representation of the political parties;
- 2) the Gressman Petitioners did not adequately establish that they considered community interests when deciding to erect boundary lines across the Commonwealth;
- 3) based on both its credited efficiency gap score and credited mean-median score, it provides a partisan advantage to the Democratic party in contravention to the natural state of political voting behavior and bias towards Republicans in Pennsylvania.

49. Although the Court could conceivably find that quite a few, if not all, of the remaining maps, are entirely consistent with the Free and Equal Elections Clause, it faces the task of having to choose and recommend only one map to our Supreme Court and effectively usurp the role and function of the law-making bodies of this Commonwealth.

50. In navigating this “rough terrain” and undertaking this “unwelcomed obligation,” which is “a notoriously political endeavor,” *Carter v. Chapman* (Pa., No. 7 MM 2022, order filed Feb. 2, 2022), ___ A.3d ___, at ___ (Dougherty, J., concurring statement at 3-5) (internal citations omitted), the Court specifically credits the evidence of Governor Wolf’s expert, Dr. Duchin, in part, and in the following regards.

51. The Court accepts as credible Dr. Duchin’s opinion to the extent she concluded that, among other submissions, the map of the Voters of PA *Amici* and Reschenthaler 1 both evince a “first tier” standard of excellence and easily satisfy the baseline “floor” standard or neutral criteria under *LWV II*.

52. The Court accepts as credible Dr. Duchin’s opinion insofar as she opined that Reschenthaler 2 falls within a “second tier” standard of excellence and also satisfies the baseline “floor” standard or neutral criteria under *LWV II*.

53. The Court further accepts as credible Dr. Duchin’s testimony and statements in her report that HB 2146 is population balanced and contiguous, shows strong respect for political boundaries, is reasonably compact, and has better “splits” than Governor Wolf’s plan.

54. Regarding Reschenthaler 1 and Reschenthaler 2, the Court accepts as credible Dr. Duchin’s admissions and concessions that the Reschenthaler maps had the

lowest “county pieces” (29) and municipal splits (16), and were tied for the lowest with respect to “municipal pieces” (33).

55. Additionally, the Court credits Dr. Rodden’s testimony explaining that his analysis of the partisan nature of the proposed maps showed that the estimated seats for Democrats and Republicans between the Carter Map, on one hand, and the Reschenthaler 1 and 2 maps, on the other hand, differed by just one seat out of 17.

56. Concerning the map submitted by the Voters of PA *Amici*, the Court credits the evidence demonstrating that it had the best Popper-Polsby score of 0.3951 and, in this particular respect, is superior in terms of the metrics used to evaluate compactness.

57. As a result of its credibility and weight determinations, the Court finds that the map submitted by the Voters of PA *Amici*, the Congressional Intervenors’ maps (especially Reschenthaler 1), and the map of the Republican Legislative Intervenors (known as HB 2146) are consistent with the Free and Equal Elections Clause of the Pennsylvania Constitution, and, also, the aspirations and ideals expressed by that constitutional provision as pronounced by the Court in *LWV II* due to their compactness, degree of partisan fairness, and specific development of congressional districts.

58. For further support of this recommendation, the Court finds that the proposed congressional districts within the map proposed by Voters of PA *Amici*, Reschenthaler 1, and HB 2146 credibly and persuasively comply with the various experts’ universal recognition that the surface areas comprising the districts should be in accord with the natural, political, and structural geography of those areas.

59. The Court also finds that the proposed congressional districts within the map proposed by Voters of PA *Amici*, Reschenthaler 1, and HB 2146 credibly and

persuasively create a sufficient number of competitive, “toss up” congressional districts which could go either way, depending upon the particular election and/or office at issue and the qualifications and political platforms of the individual candidates.

60. On a vis-à-vis comparison, the Court finds that Reschenthaler 1 would slightly exceed the map of Voters of PA *Amici* in that it provided a more extensive report on the preservation of communities of interest, a precept recognized by the courts as a heavy, if not mandatory, factor in this type of assessment.

61. Although the Republican Legislative Intervenors requested the Court to provide some degree of presumptive deference to HB 2146, because the enactment had gone through the proper legislative process and was passed by the General Assembly, the Court declined to do so summarily and instead assessed HB 2146 evenly and through the same rigorous scrutiny, against all the traditional constitutional criteria and measures and on the same plane and footing as the other parties and *amici* and their respective maps.

62. The Court finds it is the General Assembly’s prerogative, rather its constitutional mandate, to redraw the state’s congressional districts under Article 1, section 4 of the United States Constitution and its related provisions in the Pennsylvania Constitution and state statutes.

63. Following this duty, HB 2146 was passed by the General Assembly, both the House of Representatives and Senate and, as such, constitutes a valid bill that cleared through and was enacted by Pennsylvania’s bicameral, legislative branch of government.

64. The Court finds that HB 2146 originated as a plan proposed and drawn by a well-known nonpartisan citizen, Amanda Holt, and, after being made available for

public comment, underwent the scrutiny and consideration necessary to reflect policy choices that are bestowed to the General Assembly as the legislative branch of government.

65. Having conducted a separate and independent review of HB 2146, in and of itself and alongside the other plans and maps, the Court credits all the evidence of record demonstrating the statistical soundness, partisan impartiality, and overall strengths of the figures and methods supporting HB 2146, including the manner and mode through which it was devised, contemplated, and passed by the legislative bodies and branch of the Commonwealth of Pennsylvania.

66. More specifically, the Court finds the methodology and reasoning employed by Dr. Barber to be credible and persuasive. Dr. Barber, who received his Ph.D. in political science from Princeton University in 2014 with emphases in American politics and quantitative methods/statistical analyses, was one of two experts who conducted a simulation analysis that compared proposed maps with a set of 50,000 simulated maps; he sufficiently articulated and identified the variables for the algorithmic creation of simulated maps; the parameters of his simulation analysis included only the traditional redistricting criteria, and not partisan data; and, in separately considering the partisan lean of districts, Dr. Barber analyzed a set of all statewide elections from 2012 to 2020, thereby accounting for a relatively greater amount of elections during a longer timeframe than the other experts.

67. Based on the credible evidence of record, the Court finds that, in dividing 15 counties, 16 municipalities and 9 precincts, HB 2146 performs very well regarding political subdivision splits. The Court especially notes that, while the range of precinct splits in the other submitted plans varies from 9 to 38, HB 2146 splits only

9 precincts, which is the lowest of any plan by a total of 7 precincts. Further, these splits are consistent and on par with the 2018 Remedial Plan.

68. The Court notes and provides evidentiary weight to the fact that HB 2146 places only two incumbents, a Democrat and a Republican, in one district and, when considered with the other competitive proposals, does not relatively seek to obtain an unfair partisan advantage through incumbent pairings.

69. The Court notes and provides great evidentiary weight to the fact that the district compositions of HB 4126 are consistent with Dr. Naughton's credited and unrefuted testimony, in the regards that follow.

70. Dr. Naughton credibly and undisputedly testified that the residents of Bucks County share the same community interests; Bucks County has been wholly contained within a single district for decades; and, therefore, Bucks County should be located entirely within one district.

71. Consistent with Dr. Naughton's recommendation, HB2146, unlike the map proposed by Governor Wolf, does not split Bucks County.

72. Dr. Naughton credibly and undisputedly testified that, regarding whether to combine Philadelphia's surplus population with Bucks County, the communities in Bucks County are more similar to those in Montgomery County and, thus, Bucks County should add population to its district by extending the district line into Montgomery County, rather than Philadelphia County.

73. Dr. Naughton credibly and undisputedly testified and opined that Philadelphia's surplus population would be best combined with a district with maximum commonality; on comparison, Delaware County and Philadelphia County share similar communities of interest; the most sensible plan in this respect would

attach surplus Philadelphia residences to Delaware County; and, hence, Philadelphia County should extend into Delaware County to obtain additional population.

74. Consistent with Dr. Naughton's recommendation, HB 2146 does not connect Philadelphia's surplus population to Bucks County.

75. Consistent with Dr. Naughton's recommendation, HB 2146 connects Philadelphia's surplus population to Delaware County.

76. Furthermore, according to credible evidence of record, although Dr. Barber did not explicitly consider race in his analysis, he determined, as confirmed by other experts in this case, that HB 2146 maintains two minority-majority congressional districts, including 1 district where a majority of the population was comprised of African-Americans, as did the 2018 Remedial Map.

77. Having reviewed the experts' various testimonies and reports, the Court accepts and credits a 0.324 Polsby-Popper score, which is remarkably similar to the 2018 Remedial Plan's Polsby-Popper score of 0.327, to accurately reflect and indicate the compactness measure for HB 2146.

78. Given the credible evidence of record, HB 2146 is predicted to result in 9 Democratic-leaning seats and 8 Republican-leaning seats and, consequently, is more favorable to Democrats than the most likely outcome of 50,000 computer drawn simulated maps that used no partisan data, which resulted in 8 Democratic-leaning seats and 9 Republican-leaning seats.

79. Unlike other maps that leaned Democrat, here, it is the Republican majority in the General Assembly that developed and proposed a plan, HB 2146, that favors Democrats, which ultimately underscores the partisan fairness of the plan.

80. The Court finds, as a result of the credible experts' opinions, reports, and concessions made during cross-examinations, that HB 2146 falls well within the

acceptable constitutional ranges and indicia used to measure partisan fairness, in the following particulars.

81. H.B. 2146, when analyzed with districts that have a Democratic vote share of .48 to .52, which is a common range for assessing competitive elections, creates 5 competitive seats, 4 of which lean Democratic, and, ultimately, has more competitive districts than any other plan.

82. H.B. 2146 possesses a mean-median of -0.015, which is very close to zero and virtually unbiased, and demonstrates that HB 2146 is more favorable to Democrats than 85% of the simulation results.

83. H.B. 2146 has an efficiency gap of -0.02, which, again, is very close to zero and virtually unbiased, and, furthermore, demonstrates that Democratic votes are not much more likely than Republican votes to be “wasted” across districts.

84. As a matter of fact, HB 2146 maintains the City of Pittsburgh within one congressional district and, unlike the plans proposed the Governor, the Senate Democratic Caucus, the Draw the Lines *Amici*, and the *Ali Amici*, preserve the shared interests of the communities located within the City.

85. Even without the testimony of Drs. Naughton and Barber, other experts agreed that HB 2146 satisfies the baseline floor for constitutionality under *LWV II*.

86. Based on all of the above, the Court finds and recommends that HB 2146 meets all the neutral, traditional redistricting criteria, as announced in *LWV II*, noting that none of the parties have meaningfully contested or otherwise disputed this fact.

87. Based on these features, facets, and characteristics detailed previously, the Court finds as fact and law that the “neutral criteria” in HB 2146 is paramount to any extraneous considerations. More specifically, the Court finds that there is no

credible evidence of record to establish that the neutral criteria have been subordinated, in whole or in part, to another factor or other factors.

88. As such, the Court concludes that HB 2146 passes constitutional muster under the Free and Equal Elections Clause. *See LWV II*, 178 A.3d at 816 (“[W]e find these neutral benchmarks to be particularly suitable as a measure in assessing whether a congressional districting plan dilutes the potency of an individual’s ability to select the congressional representative of his or her choice, and thereby violates the Free and Equal Elections Clause.”).

89. As explained above, HB 2146 was subject to vigorous scrutiny and was passed by a majority of assemblypersons in both chambers of the General Assembly. In Pennsylvania, the General Assembly has 253 members, consisting of a Senate with 50 members and a House of Representatives with 203 members, and it is beyond cavil that the breadth and diversity of the assemblypersons’ uniquely defined constituency reflect and represent, on the whole, the will of the people.

90. Consequently, HB 2146 properly redistricted the Commonwealth into 17 congressional districts in accordance with the constitutional process for lawmaking as vested in the legislative branch, and the Court must find that the decisions and policy choices expressed by the legislative branch are presumptively reasonable and legitimate, absent a showing of an unconstitutional defect or deficiency. *Cf. Upham v. Seamon*, 456 U.S. 37, 41-42.

91. Although Governor Wolf vetoed HB 2146 and that bill never obtained the official status of a duly enacted statute, neither Governor Wolf nor any other party herein has advanced any cognizable legal objection to the constitutionality of the congressional districts contained therein.

92. Admittedly, due to the breakdown or stalemate in the legislative process, and the failure of the General Assembly and Governor to pass a redistricting statute to serve as the boundary lines and composition of congressional districts in the United States House of Representatives, this Court has been directed to assess the evidence and ultimately recommend a map to our Supreme Court to serve that very purpose.

93. In absence of any cognizable legal or constitutional objection to the congressional districts in HB 2146 by the Governor and, without there being any basis upon which the Court could reasonably conclude or recommend that HB 2146 contravenes a constitutional or statutory violation, it is the considered judgment of the Court that the best course of action is to recognize and place appreciable weight to the fact that, on balance, HB 2146 represents “[t]he policies and preference of the state,” *Upham*, 456 U.S. at 41; *see Perry*, 132 S. Ct. at 941, and constitutes a profound depiction of what the voters in the Commonwealth of Pennsylvania desire, through the representative model of our republic and democratic form of government, when compared to the Governor or any other of the parties or their *amici*.

94. The Court believes that in, the context of this case, where it must recommend one map of many, as a matter of necessity, the interests of the Commonwealth as a sovereign state and political entity in its own right, would best be served by factoring in and considering that HB 2146 is functionally tantamount to the voice and will of the People, which, as a matter of American political theory since its founding, is a device of monumental import and should be honored and respected by all means necessary.

95. Therefore, with all things being relatively equal with regard to the maps that the Court has not previously discounted or recommended not be adopted, the Court

respectfully recommends that our highest and most honorable institution in the judicial branch of government, our Supreme Court, recognize and revere the expressed will of the People, and the “policies and preferences of our State,” *Upham*, 456 U.S. at 41; *see Perry*, 132 S. Ct. at 941, as previously stated, and adopt HB 2146 to represent the boundary lines for the Commonwealth of Pennsylvania in its creation of geographically-unique congressional districts so that the citizens of our great Commonwealth are ensured fair and equal representation in the United States House of Representatives.

96. In so recommending, the Court notes that, in times like these, other courts throughout the nation, including the United States Supreme Court, have appeared to promote and head such an admonition. For example, as the United States Supreme Court said in *Perry*: “Experience has shown the difficulty of defining neutral legal principles in this area, for redistricting ordinarily involves criteria and standards that have been weighed and evaluated by the elected branches in the exercise of their political judgment.” 565 U.S. at 941. And, as the United States Supreme Court instructed in another case:

Just as a federal district court, in the context of legislative reapportionment, should **follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature**, whenever adherence to state policy does not detract from the requirements of the Federal Constitution, we hold that a district court should similarly honor state policies in the context of congressional reapportionment. In fashioning a reapportionment plan or in choosing among plans, **a district court should not pre-empt the legislative task nor intrude upon state policy any more than necessary.**

Upham v. Seamon, 456 U.S. 37, 41-42 (1982) (*per curiam*) (emphasis added). The Court believes that these underlying principles are no less applicable to a state court’s examination of the policies and preferences enunciated by a state’s legislative branch of government and reflect a proper exercise of judicial restraint in not pre-empting this otherwise legislative task.

97. For the above-stated reasons, and as its penultimate suggestion, the Court respectfully, yet firmly, **recommends that our Supreme Court adopt and implement HB 2146 as a matter of state constitutional law as it meets all of the traditional criteria of the Free and Equal Elections Clause, and does so in respects even noted by the Governor’s expert, as well as the other considerations noted by the courts, it compares favorably to all of the other maps submitted herein, including the 2018 redistricting map, it was drawn by a non-partisan good government citizen, subjected to the scrutiny of the people and duly amended, it creates a Democratic leaning map which underscores its partisan fairness and, otherwise, is a reflection of the “policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature.”** *Perry*, 132 S. Ct. at 941. (underlining added) *See also Upham*, 456 U.S. at 42 (reaffirming that a federal district court “erred when, in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state-proposed plan” because “[t]he only limits on judicial deference to state apportionment policy [] were the substantive constitutional and statutory standards to which such state plans are subject”); *Donnelly*, 345 F. Supp. at 965 (adopting the legislature’s proposed plan, explaining that “[t]he legislative adoption of [redistricting plan] tips the scales in favor of the plan . . . which provides districts essentially as outlined by the legislature

...” and observing that the plan had “the added advantage that it is basically the plan adopted by the legislature”).

B. Revised 2022 Primary Election Calendar Recommendations

2022 Pennsylvania Election Schedule

FF1. Under the current election schedule, Pennsylvania’s 2022 General Primary Election, which will include the next congressional primary election, is scheduled for May 17, 2022. *See* Section 603(a) of the Election Code, 25 P.S. §2753(a);

<https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Documents/2022%20Important%20Dates.pdf> (last visited Feb. 2, 2022).

FF2. Under the current election schedule, the first day to circulate and file nomination petitions is February 15, 2022. *See* Section 908 of the Election Code, 25 P.S. §2868;

<https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Documents/2022%20Important%20Dates.pdf> (last visited Feb. 2, 2022).

FF3. Under the current election schedule, the last day to circulate and file nomination petitions is March 8, 2022. *See* Section 977 of the Election Code, 25 P.S. § 2937;

<https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Documents/2022%20Important%20Dates.pdf> (last visited Feb. 2, 2022).

FF4. Under the current election schedule, the last day to file objections to nomination petitions is March 15, 2022. *See* Section 977 of the Election Code, 25 P.S. § 2937;

<https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Documents/2022%20Important%20Dates.pdf> (last visited Feb. 2, 2022).

1. **Parties’ Positions on Revisions to 2022 General Primary Election Calendar**

Senate Democratic Caucus Intervenors

FF5. The Senate Democratic Caucus Intervenors suggested that the 2022 General Primary Election schedule “is essentially unworkable at this point in time.” (N.T. at 1025.) They claim “[i]t will disenfranchise millions of Pennsylvania voters and severely prejudice candidates running for public office if [the schedule] is not modified by the Pennsylvania Supreme Court.” *Id.* at 1025. They point to the fact the Legislative Reapportionment Commission has not yet approved a final legislative redistricting map, the instant litigation regarding a congressional district plan, and this Court’s decision in *McLinko v. Department of State*, __ A.3d __ (Pa. Cmwlth., No. 244, 293 M.D. 2021, filed Jan. 28, 2022), as further support that the 2022 General Primary Election schedule should be adjusted, including postponing the primary. (N.T. at 1025-26.)

House Democratic Caucus Intervenors

FF6. The House Democratic Caucus Intervenors suggested that the Court should follow Judge Craig’s decision in *Mellow*, in which he talked about “the idea of maintaining a single day for the primary as a paramount consideration in order [] to avoid confusion of potentially having a primary for congressional and a primary for everybody else on different timelines with different petitioning periods[.]” (N.T. at 1042.)

Congressional Intervenors

FF7. The Congressional Intervenors indicated their belief that “there is absolutely no reason to move the” 2022 General Primary Election calendar, with respect to the primary itself, as its “premature.” (N.T. at 1055.) However, the Congressional Intervenors do think that the dates for circulating nomination petitions, among other dates, should be moved, and have been in the past, citing the *LWV III* case from 2018. *Id.* at 1055-56.

House Republican Intervenors

FF8. The House Republican Intervenors “would prefer to [sic] a least possible change to any election calendar[,]” and they “do not believe changing the primary date would be appropriate.” (N.T. at 1068.)

Senate Republican Intervenors

FF9. The Senate Republican Intervenors take the position that any changes to the 2022 General Primary Election calendar could be addressed by the General Assembly, if necessary. (N.T. at 1077-78.) The Senate Republican Intervenors recognized that the Court has changed the dates in the past; however, “they feel that conditions are such that they must change now because of the legal posture of this matter.” *Id.* at 1078. The Senate Republican Intervenors further believe that “changes should be limited only to what’s absolutely necessary[,]” and they do not “support a shortening of the petition circulation and signature gathering window.” *Id.* The Senate Republican Intervenors otherwise took no specific position as to this litigation’s effect on the three pertinent dates that exist on the calendar. *Id.*

Respondents

FF10. The Acting Secretary of the Commonwealth noted at the hearing that the election “calendar situation at the moment is --- rather complicated[.]” (N.T. at 1092-93.) Her counsel also informed that it would not be in the people of the Commonwealth’s best interest to have two separate primaries. *Id.* at 1093. As such, the Acting Secretary thinks “it would be preferable to have three weeks between the [] time of the final map, and really by final map we mean including the resolution and the appeal is adopted and the first date in the primary calendar.” She continued, “if we had to we think we could probably do that in two weeks that in two weeks if we could transfer resources. And there are other ways in which we could condense the existing calendar as well.” *Id.* at 1094-95.

Governor Wolf

FF11. Counsel indicated at the hearing that Governor Wolf “feels very strongly we should not divide the primary and we should end up with a primary date ultimately that will accommodate both redistricting processes that are currently still proceeding.” (N.T. at 1096.)

Gressman Petitioners

FF12. The Gressman Petitioners indicated that they do not believe moving the 2022 General Primary Election is necessary at this point. (N.T. at 1106.) Moreover, the Gressman Petitioners “would defer to the election administrators who are the professionals in that space, but [they] do recognize that there can be some compression of the preprimary schedule.” *Id.*

Carter Petitioners

FF13. The Carter Petitioners do not dispute that “the Court has the authority to change deadlines, including the primary deadline[.]” if necessary. (N.T.

at 1118.) However, the Carter Petitioners did not think it was necessary at the time of the hearing. *Id.*

The Court notes and recommends for adoption by the Supreme Court the Congressional Intervenors' proposed revisions to the 2022 General Primary Election calendar, which suggest February 22, 2022, as the deadline for adopting and implementing a congressional redistricting plan. Specifically, the Congressional Intervenors propose that the following dates be changed: (1) the first day to circulate and file nomination petitions; (2) the last day to circulate and file nomination petitions; and (3) the last day to file objections to nomination petitions. According to the Congressional Intervenors, using February 22, 2022, as the deadline by which the state judiciary must adopt any congressional reapportionment plan, the Congressional Intervenors assert that it would still be feasible to hold the 2022 General Primary Election on its currently scheduled date of May 17, 2022, which is a similar course of action the Supreme Court followed in *LWV III*. The current and revised election dates appear below:

2. Current 2022 General Primary Election Schedule

- First day to circulate/file nomination petitions – Tuesday, February 15, 2022
- Last day to circulate and file nomination petitions – Tuesday, March 8, 2022
- Last day to file objections to nomination petitions – Tuesday, March 15, 2022
- 2022 General Primary Election – Tuesday, May 17, 2022

3. Proposed REVISED 2022 General Primary Election Schedule

- First day to circulate/file nomination petitions – Tuesday, March 1, 2022
- Last day to circulate and file nomination petitions – Tuesday, March 15, 2022
- Last day to file objections to nomination petitions – Tuesday, March 22, 2022

- 2022 General Primary Election – Tuesday, May 17, 2022

The Court notes that the first two proposed revised dates, appearing immediately above, reflect a shift of exactly two weeks from the originally scheduled deadlines to the proposed revised deadlines. The third proposed revised date listed immediately above reflects a shift of exactly one week from the originally scheduled objection deadlines. The Court further notes that the above dates reflect the exact schedule adopted by the Supreme Court in *LWV III*, albeit two years later.

However, in light of the changed circumstances of this litigation prompted by the Supreme Court's February 2, 2022 order, granting Petitioners' Emergency Application for Extraordinary Relief and invoking its extraordinary jurisdiction, designating the undersigned as a Special Master in this matter and directing the filing of a Report and Recommendation, and further directing, *inter alia*, that oral argument on any exceptions filed to the Special Master's Report is scheduled to be held on February 18, 2022, before the Supreme Court, this Court recognizes that further and/or different changes to the election calendar than those recommended above may be necessary under the circumstances.⁴⁹

s/ Patricia A. McCullough

PATRICIA A. McCULLOUGH, Judge
of the Commonwealth Court of
Pennsylvania Appointed as Special
Master

⁴⁹ *Amicus* Participants Voters of the Commonwealth's Application for Leave to File Responsive Expert Report, filed on January 26, 2022, is denied. See 1/14/2022 Cmwlth. Ct. Order. This Court additionally notes that it will not consider the *Amici Curiae* Brief of NAACP Philadelphia Branch and Black Clergy of Philadelphia & Vicinity in Support of Senate Democratic Caucus' Proposed Redistricting Plan 2, filed on January 31, 2022, which was after the evidentiary hearing in this matter.

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

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

Petitioners

v.

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

Respondents

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 :
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 9th day of February, 2022, given that oral argument in this matter is currently scheduled for February 18, 2022, the General Primary Election calendar, see, *e.g.*, 25 P.S. §§2868 and 2873 (relating to the time of circulating and filing nomination petitions), is **TEMPORARILY SUSPENDED**, pending further Order of this Court.

IN THE SUPREME COURT OF PENNSYLVANIA

No. 7 MM 2022

CAROL ANN CARTER *et al.*,
Petitioners,

v.

LEIGH M. CHAPMAN, *et al.*,
Respondents.

**RESPONDENTS' EXCEPTIONS REGARDING
THE SPECIAL MASTER'S PROPOSED REVISION TO THE
2022 ELECTION CALENDAR/SCHEDULE AND
INCORPORATED BRIEF IN SUPPORT THEREOF**

On Review of the Special Master's Proposed Findings of Fact and
Conclusions of Law, Nos. 464 M.D. 2021 and 465 M.D. 2021 (February 7, 2022)

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
Robert A. Wiygul (I.D. No. 310760)
Cary L. Rice (I.D. No. 325227)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103-6933
(215) 568-6200

OFFICE OF ATTORNEY GENERAL
Caleb Curtis Enerson (I.D. No.
313832)
15th Floor, Strawberry Square
Harrisburg, PA 17120
1600 Arch St., Suite 300
Philadelphia, PA 19103
(717) 787-2717

(additional counsel on signature page)

Respondents, the Acting Secretary of the Commonwealth and Director of the Bureau of Election Services and Notaries, respectfully submit these Exceptions to the Special Master’s proposed revision to the 2022 election calendar. In support of these Exceptions, the Respondents submit and attach hereto the Affidavit of Jonathan Marks dated February 14, 2022 (“Marks II Aff.”).

The Secretary of the Commonwealth is Pennsylvania’s chief election official, and Respondents are both election administrators charged with ensuring that Pennsylvania’s elections are conducted in a fair, lawful, and orderly manner. Thus, in this litigation, Respondents’ roles are two-fold: (1) to provide the Court with information where necessary; and (2) to minimize disruption of the 2022 elections by keeping the Court and the other parties apprised of election schedules and potential alterations to those schedules.¹ In keeping with those roles, Respondents respectfully submit these Exceptions to assist the Court in determining what changes to the 2022 election calendar are feasible and necessary based on the existence of other deadlines and the demands of election administration.

Although the Special Master’s February 7, 2022 Report recommended certain changes to the election calendar for the congressional primary election, the

¹ Respondents note that, although they have not proposed a congressional district plan in this litigation, Intervenor-Respondent Governor Wolf has proposed a plan for judicial adoption.

Report expressly “recognize[d]” that, “in light of the changed circumstances of this litigation prompted by [this] Court’s February 2, 2022 order, granting Petitioners’ Emergency Application for Extraordinary Relief and invoking its extraordinary jurisdiction, ... further and/or different changes to the election calendar ... may be necessary.”² Respondents agree that further changes are necessary and appropriate. In particular, the Special Master’s Report did not address the calendar for the statewide and state legislative elections. For the reasons discussed herein, Respondents respectfully request that this Court address the calendar for all primary elections at this time.

In summary, despite delays in the redistricting process for both congressional and state legislative elections, Respondents believe that it is feasible—and highly preferable—to conduct the primary election for all races on the currently scheduled date of May 17, 2022.

Given recent experience, there appears to be a substantial possibility that a state-court decision moving the date of the primary election for a federal office would be challenged under the Elections Clause, *see* U.S. CONST. art. I, § 4, cl. 1.³

² The Honorable Patricia A. McCullough, Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendation of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar Schedule at 222 (Feb. 7, 2022).

³ In *Pennsylvania Democratic Party v. Boockvar*, 283 A.3d 345 (Pa. 2020), at least one of the parties and counsel to the present proceeding (the “Present Participants”) filed an Elections Clause challenge to this Court’s decision to extend, by only three days, the statutory “received-

Irrespective of the merits and ultimate resolution of such litigation, its pendency would inject uncertainty into an election cycle that is already quite challenging for both election administrators and candidates.

Further, keeping the congressional primary on May 17 but changing the primary date for state legislative offices, *i.e.*, having separate primaries, would likely cause voter confusion, depress voter participation, and cost taxpayers tens of millions of dollars. It would also present county election offices with significant logistical challenges, including the recruitment of poll workers. Respondents believe that the county boards of elections, which are responsible for directly administering elections, would also like to avoid having two separate primary dates.

In Section II.A and B below, Respondents provide a proposed election calendar (one for the statewide and congressional elections, and another for the

by” deadline for mail-in ballots. The Court’s Order was based on its determination that enforcing the statutory deadline in the extraordinary circumstances of the 2020 general election—which took place during the height of the COVID-19 pandemic and was beset for mail delays—would disenfranchise voters in violation of the Pennsylvania Constitution’s Free and Equal Elections Clause. *Id.* at 369. Nonetheless, the Present Participants asked the Supreme Court of the United States to reverse this Court’s Order, contending that the Order violated the Elections Clause. *See* Emergency Application for a Stay Pending the Filing and Disposition of a Petition for a Writ of Certiorari, *Scarnati v. Pa. Democratic Party*, No. 20A53 (U.S. filed Sept. 28, 2020); Emergency Application for a Stay Pending Disposition of a Petition for a Writ of Certiorari, *Pa. Democratic Party v. Boockvar*, No. 20A54 (U.S. filed Sept. 28, 2020); *see also* *Scarnati v. Boockvar*, 141 S. Ct. 644 (U.S.) (denying application to stay this Court’s Order by a 4-4 vote); *Republican Party of Pa. v. Boockvar*, 141 S. Ct. 643 (same).

state legislative election) that would allow the primary election for all races to be held on May 17, 2022.

I. THE CURRENT ELECTION SCHEDULE

The current election schedule stands as follows:

Event	Deadline
The first day before the primary election to circulate and file nomination petitions (<i>see</i> 25 P.S. § 2868).	February 15, 2022
The last day before the primary election to circulate and file nomination petitions (<i>see</i> 25 P.S. § 2868).	March 8, 2022
The first day before the primary election to circulate and file nomination papers (<i>see</i> 25 P.S. § 2913(b)).	March 9, 2022
Deadline to file objections to nomination petitions (<i>see</i> 25 P.S. § 2937).	March 15, 2022
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions (<i>see</i> 25 P.S. § 2937).	March 18, 2022
The last day before the primary election for candidates who filed nomination petitions to withdraw their candidacy (<i>see</i> 25 P.S. § 2874).	March 23, 2022
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions (<i>see</i> 25 P.S. § 2937).	March 23, 2022
The last day before the primary election for the County Board of Elections to send remote military-overseas absentee ballots (<i>see</i> 25 Pa.C.S. § 3508(b)(1)).	March 28, 2022
The last day before the primary election for the County Board of Elections to send all remaining military-overseas absentee ballots (<i>see</i> 25 Pa.C.S. § 3508(a)(1); 52 U.S.C. § 20302(a)(8)(A)).	April 1/2, 2022 ⁴

⁴ Under state law, if this deadline falls on a Saturday, as it does this election cycle, the deadline is moved to the proceeding day. 25 Pa.C.S. § 3508(a)(1). Federal law does not have a similar rule, and the deadline stays the same even if it falls on the weekend. 52 U.S.C. § 20302(a)(8)(A). This means that under state law, the last day before the primary election for the County Board of Elections to send all remaining military-overseas absentee ballots is April 1, while the deadline under federal law is April 2.

Event	Deadline
The last day before the primary election for voters to register (<i>see</i> 25 P.S. § 3071).	May 2, 2022
The last day before the primary election to apply for a mail-in or civilian absentee ballot (<i>see</i> 25 P.S. § 3146.2a(a)).	May 10, 2022
The last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots for the primary election (<i>see</i> 25 P.S. § 3146.6(a)).	May 17, 2022
Pennsylvania’s 2022 general primary election (<i>see</i> 25 P.S. § 2753(a)).	May 17, 2022
The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election for the primary election (<i>see</i> 25 Pa.C.S. § 3511(a)).	May 24, 2022

II. PROPOSED MODIFICATIONS TO THE CURRENT ELECTION CALENDAR WITH MAY 17 PRIMARY

A. Proposed Modified Statewide and Congressional Calendar

Through a combination of internal administrative adjustments and Court-ordered date changes, it is possible to hold the statewide and congressional primaries on the scheduled May 17, 2022 date.

The current election schedule gives the Counties ten weeks to prepare for the primary election, between (1) the last date before the primary election for circulating and filing nomination petitions (currently March 8), and (2) the primary election date (May 17). Respondents believe that the Counties could fully prepare for the statewide and congressional primary elections in nine weeks.

To accommodate this slightly compressed schedule, the Court would need to order a period for circulating and filing nomination petitions that lasted two weeks,

instead of three; and the nominations period would need to start on March 1, spanning two weeks and ending on the recommended revised deadline of March 15. The Department and county boards of elections have typically had three weeks of preparation time before the first date for circulating and filing nomination petitions. During this period, the Department would update the Department's Elections and Campaign Finance system, and the counties would update the Statewide Uniform Registry of Electors ("SURE") system, to reflect the new districts.⁵ The Department previously represented that with the addition of staff and increased staff hours, it would be possible for the Department to complete its preparations in two weeks instead of three.⁶ Upon further review, the Department believes that, by using generic nomination petitions,⁷ the Department could complete its preparations for circulating and filing nomination petitions quickly

⁵ See Affidavit of Jonathan Marks ("Marks I Aff.") ¶ 15 (Jan. 28, 2022), which was admitted into evidence at the hearing conducted by the Special Master in this proceeding on January 27-28, 2022.

⁶ See *id.* ¶ 16.

⁷ Ideally, the Department and county boards of elections would have an opportunity, before the circulation and filing of nomination petitions begin, to fully update the Statewide Uniform Registry of Electors (SURE) system with information about the new districts. In that event, the computerized tool used to generate nomination petitions would allow candidates to pre-populate all the information needed on the Candidate's Affidavit, as well as the information needed in the preamble portion of the nomination petition page, based on the specific office the candidate is seeking. By contrast, with generic nomination petitions, candidates running in particular districts must manually fill in the District Number line on the Candidate's Affidavit and the District Number line and County of Signers lines at the top of each nomination petition page. These two lines will be blank when the petition forms are generated and printed. Nonetheless, the computerized tool used to generate the generic nomination petitions will still pre-populate the rest of the information for the candidate's review.

and in only a couple of days, by March 1, 2022. Although the use of generic nomination petitions is less than ideal, *see supra* note 6, it will allow for the election process to proceed in a timely manner, as necessitated under the unusual circumstances of the current election cycle.

Accordingly, if the first date for circulating and filing nomination petitions were moved from February 15 to March 1, the Department would need to have a final congressional plan in place by no later than **February 27, 2022**. However, the Department respectfully requests that the Court issue an Order establishing the calendar deadlines as early as possible, and before February 27, 2022, so that counties, candidates, and the Department have time to prepare for the commencement of petition filing.

The below chart illustrates the modifications proposed to the calendar for the statewide and congressional elections:

Event	Current Deadline for Statewide and Congressional Elections	Proposed Modified Deadline for Statewide and Congressional Elections
First day to circulate and file nomination petitions	February 15, 2022	<u>March 1, 2022</u>
Last day to circulate and file nomination petitions	March 8, 2022 <i>(three-week period for circulating and filing nomination petitions)</i>	<u>March 15, 2022</u> <i>(<u>two-week</u> period for circulating and filing nomination petitions)</i>
First day to circulate and file nomination papers	March 9, 2022	March 16, 2022

Event	Current Deadline for Statewide and Congressional Elections	Proposed Modified Deadline for Statewide and Congressional Elections
Deadline to file objections to nomination petitions	March 15, 2022 <i>(objections must be filed within 7 days)</i>	March 22, 2022
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions	March 18, 2022 <i>(not later than 10 days after the last day for filing nomination petitions)</i>	March 25, 2022
Last day for candidates who filed nomination petitions to withdraw their candidacy	March 23, 2022	[no deadline change]
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions	March 23, 2022 <i>(not later than 15 days after the last day for filing nomination petitions)</i>	March 30, 2022 ⁸
Last day for the County Board of Elections to send remote military-overseas absentee ballots	March 28, 2022	April 2, 2022 ⁹
Last day for the County Board of Elections to send all remaining military-overseas absentee ballots	April 1/2, 2022 ¹⁰	April 2, 2022
Last day for voters to register before the primary election	May 2, 2022	[no deadline change]

⁸ Following this chart, Respondents discuss the need for this Court to modify the 10-day period for appealing from the Commonwealth Court’s decisions resolving objections to nomination petitions.

⁹ See Marks II Aff. ¶ 21. Because the deadline for sending “remote” military-overseas absentee ballots is a function of state law rather than federal law, this Court has the power to move this deadline.

¹⁰ See *supra* note 4.

Event	Current Deadline for Statewide and Congressional Elections	Proposed Modified Deadline for Statewide and Congressional Elections
Last day before the primary election to apply for a mail-in or civilian absentee ballot	May 10, 2022	[no deadline change]
Last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots for the primary election	May 17, 2022	[no deadline change]
Pennsylvania’s 2022 general primary election	May 17, 2022 <i>(ten weeks between last date for circulating and filing nomination petitions and primary election)</i>	[no deadline change] <i>(nine weeks between last date for circulating and filing nomination petitions and primary election)</i>
The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election for the primary election	May 24, 2022	[no deadline change]

In conjunction with this proposal, Respondents wish to address a deadline that is not listed on the chart above—namely, the deadline for parties to appeal from the Commonwealth Court’s decisions resolving objections to nomination petitions. If the Court adopts the proposal above, the Commonwealth Court decisions will be due by March 30, 2022. Under the Rules of Appellate Procedure, any person aggrieved by such decisions would then have 10 days to appeal to this Court. *See* Pa.R.A.P. 803(c)(1)(ii); *In re Morgan*, 428 A.2d 1055, 1057 (Pa. Commw. Ct. 1981).

This Court has the power to shorten this deadline. *See* Pa.R.A.P. 105(a) (an appellate court may “disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction”); *see also Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711, 721 n.10 (Pa. 2012) (“as it respects the judicial function, the Election’s Code deadlines [for resolving objections to nomination petitions] are understood ... as ‘directory’” rather than mandatory). Respondents respectfully submit that the Court should do so here, and should require aggrieved parties to file any appeals within 3 days of the pertinent Commonwealth Court’s decision.

This shortened deadline is necessary and appropriate to ensure that ballots can be finalized in time for counties to send mail-in and absentee ballots to voters. Under the Election Code, counties must distribute ballots to electors who have applied for them no later than two weeks before the primary—here, May 3, 2022. *See* 25 P.S. § 3150.15. As a practical matter, however, given mail-delivery timelines and the need to process ballot applications submitted after May 3, 2022, counties will want to begin sending ballots at an earlier date. Respondents believe that, to ensure that any nomination-petition appeals can be resolved in sufficient time to finalize the mail-in and absentee ballots, the appeal period should be shortened to 3 days.

B. Proposed Modified Legislative Calendar with May 17 Primary

As the Court is aware, the Legislative Reapportionment Commission (“LRC”) adopted a Final Plan on February 4, 2022. That means that any aggrieved party has until March 7, 2022, to file an appeal. *See* PA. CONST. art. II, § 17(d); Pa.R.A.P. 903 official comment (where, as here, appeal period expires on a Sunday, any aggrieved person has until the following Monday to file an appeal). If this Court were to expedite any briefing¹¹ and argument on the appeals and enter a final ruling on the legislative Final Plan by **March 18, 2022**, the May 17 primary date could (if the Final Plan is determined to be lawful) also remain in place for the state legislative races under the proposed schedule below.

Event	Current Deadline for Legislative Election	Proposed Modified Deadline for Legislative Election
First day to circulate and file nomination petitions	February 15, 2022	March 20, 2022
Last day to circulate and file nomination petitions	March 8, 2022 <i>(three-week period for circulating and filing nomination petitions)</i>	March 29, 2022 <i>(<u>nine-day</u> period for circulating and filing nomination petitions)</i> ¹²

¹¹ This Court may wish to consider issuing an order now requiring that any brief filed in support of an appeal of the LRC’s Final Plan be submitted on or before March 8, 2022, and that the LRC file a response brief on or before March 11, 2022.

¹² In *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992) this Court ordered a nine-day nomination-petition-circulation period for congressional candidates. *See id.* at 244. Notably, candidates for state legislative office require significantly fewer petition signatures than candidates for congressional office. *Compare* 25 P.S. § 2872.1(12) (1,000 signatures required for congressional candidate), *with id.* § 2871.1(13) (500 signatures requires for candidate for

Event	Current Deadline for Legislative Election	Proposed Modified Deadline for Legislative Election
First day to circulate and file nomination papers	March 9, 2022	March 30, 2022
Last day for candidates who filed nomination petitions to withdraw their candidacy	March 23, 2022	March 31, 2022
Last day for the County Board of Elections to send remote military-overseas absentee ballots	March 28, 2022	April 2, 2022 ¹³
Last day for the County Board of Elections to send all remaining military-overseas absentee ballots	April 1/2, 2022 ¹⁴	April 2, 2022
Deadline to file objections to nomination petitions	March 15, 2022 <i>(seven-day period for filing objections to nomination petitions)</i>	April 4, 2022 <i>(six-day period for filing objections to nomination petitions)</i> ¹⁵
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions	March 18, 2022 <i>(not later than 10 days after the last day for filing nomination petitions)</i>	April 7, 2022 <i>(not later than nine days after the last day for filing the nomination petitions)</i> ¹⁶

Pennsylvania Senate), *and id.* § 2871.14 (300 signatures required for candidate for Pennsylvania House of Representatives).

¹³ See Marks II Aff. ¶ 21.

¹⁴ See *supra* note 4.

¹⁵ This Court ordered a six-day objection period in *Mellow v. Mitchell*. See 706 A.2d at 244.

¹⁶ This Court may alter the deadlines governing the Commonwealth Court’s resolution of objections to nomination petitions. See *Holt*, 38 A.3d at 721 n.10 (“as it respects the judicial function, the Election’s Code deadlines [for resolving objections to nomination petitions] are understood ... as ‘directory’” rather than mandatory); *In re Bruno*, 101 A.3d 635, 678 (Pa. 2014) (“[t]he Supreme Court’s supervisory power over the Unified Judicial System is beyond question” and includes “authority ... over inferior tribunals”).

Event	Current Deadline for Legislative Election	Proposed Modified Deadline for Legislative Election
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions	March 23, 2022 <i>(not later than 15 days after the last day for filing nomination petitions)</i>	April 12, 2022 <i>(not later than 14 days after the last day for filing nomination petitions)¹⁷</i>
Last day for voters to register before the primary election	May 2, 2022	[no deadline change]
Last day to apply for a mail-in or civilian absentee ballot	May 10, 2022	[no deadline change]
Last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots	May 17, 2022	[no deadline change]
Pennsylvania's 2022 primary election	May 17, 2022 <i>(ten weeks between last date for circulating and filing nomination petitions and primary election)</i>	[no deadline change] <i>(seven weeks between last date for circulating and filing nomination petitions and primary election)</i>
The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election for the primary election	May 24, 2022	[no deadline change]

For the reasons discussed above, *see supra* pages 9-10, Respondents respectfully request that the Court shorten to 3 days the period for appealing from the Commonwealth Court's decisions resolving objections to nomination petitions.

The Department will, of course, make every effort to comply with any schedule that the Court puts in place. To the extent the Court deems it necessary or

¹⁷ *See supra* note 16.

appropriate, Respondents stand ready to provide testimony regarding appropriate and feasible changes to the 2022 primary election calendar, and to assist the Court in determining workable alternatives to the calendars proposed above.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: February 14, 2022

By: /s/ Robert A Wiygul
Robert A. Wiygul (I.D. No. 310760)
Cary L. Rice (I.D. No. 325227)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300

OFFICE OF ATTORNEY GENERAL
Caleb Curtis Enerson (I.D. No. 313832)
15th Floor, Strawberry Square
Harrisburg, PA 17120
1600 Arch St., Suite 300
Philadelphia, PA 19103
(717) 787-2717

TUCKER LAW GROUP
Joe H. Tucker, Jr. (I.D. No. 56617)
Dimitrios Mavroudis (I.D. No. 93773)
Jessica Rickabaugh (I.D. No. 200189)
Ten Penn Center
1801 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 875-0609

Counsel for Respondents

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

Dated: February 14, 2022

/s/ Robert A. Wiygul
Robert A. Wiygul

IN THE SUPREME COURT OF PENNSYLVANIA

<p>CAROL ANN CARTER; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>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,</p> <p>Respondents.</p>
<p>PHILIP T. GRESSMAN; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>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,</p> <p>Respondents.</p>

No. 7 MM 2022

AFFIDAVIT OF JONATHAN MARKS

Jonathan Marks, being duly sworn, deposes and says:

1. I am the Deputy Secretary for Elections and Commissions for the Commonwealth’s Department of State (the “Department”).
2. I was appointed to the position of Deputy Secretary for Elections and Commissions in February 2019.

3. I have been with the Department since 1993.

4. Prior to being appointed Deputy Secretary for Elections and Commissions in 2019, I served as Commissioner of the Bureau of Commissions, Elections and Legislation (the “Bureau”) starting in October 2011.

5. From 2008 to 2011, I served as the Chief of the Division of the Statewide Uniform Registry of Electors.

6. Prior to that, from 2004 to 2008, I served as the Chief of the Division of Elections and Precinct Data with the Bureau.

7. In my current role, I am responsible for overseeing the day-to-day operations of election administration within the Department.

8. Since I became the Commissioner of the Bureau in 2011, I have supervised the administration of the Department’s duties in more than 20 regularly-scheduled elections and over 50 special elections.

9. The next primary for all offices—statewide, congressional, and state legislative—is scheduled for May 17, 2022.

10. The current timeline of deadlines leading up to and related to the May 17, 2022 primary is as follows:

- a. The first day before the primary election to circulate and file nomination petitions is February 15, 2022. (*See* 25 P.S. § 2868.)
- b. The last day before the primary election to circulate and file

nomination petitions is March 8, 2022. (*See* 25 P.S. § 2868.)

- c. The first day before the primary election to circulate and file nomination papers is March 9, 2022. (*See* 25 P.S. § 2913(b).)
- d. The Deadline to file objections to nomination petitions is March 15, 2022. (*See* 25 P.S. § 2937.)
- e. The last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions is March 18, 2022. (*See* P.S. § 2937.)
- f. The last day before the primary election for candidates who filed nomination petitions to withdraw their candidacy is March 23, 2022. (*See* 25 P.S. § 2874.)
- g. The last day for the Commonwealth Court to render decisions involving objections to nomination petitions is March 23, 2022. (*See* 25 P.S. § 2937.)
- h. The last day before the primary election for the County Boards of Elections to send remote military-overseas absentee ballots is March 28, 2022. (*See* 25 Pa.C.S. § 3508(b)(1).)
- i. The last day before the primary election for the County Boards of Elections to send all remaining military-overseas absentee ballots is

April 1, 2022, under state law, *see* 25 Pa.C.S. § 3508(a)(1), and April 2, 2022, under federal law, *see* 52 U.S.C. § 20302(a)(8)(A).¹

- j. The last day before the primary election for voters to register is May 2, 2022. (*See* 25 P.S. § 3071.)
 - k. The last day before the primary election to apply for a mail-in or civilian absentee ballot is May 10, 2022. (*See* 25 P.S. § 3146.2a(a).)
 - l. The last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots for the primary election is May 17, 2022. (*See* 25 P.S. § 3146.6(a).)
 - m. Pennsylvania’s 2022 general primary election is scheduled for May 17, 2022. (*See* 25 P.S. § 2753(a).)
 - n. The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election is May 24, 2022. (*See* 25 Pa.C.S. § 3511(a).)
11. All of the deadlines set forth above are required by federal or state law.

¹ As a practical matter, the majority of these military-overseas ballots would typically be sent out on Friday, April 1, 2022. County officials would then process any additional military-overseas ballot requests arriving on the 45th day, sending those ballots out on Saturday, April 2, 2022.

12. The current elections schedule gives the Counties ten weeks to prepare for the primary election, between (a) the last date before the primary election for circulating and filing nomination petitions (currently March 8); and (b) the primary election date (May 17).

13. Based on my experience, the Counties could fully prepare for the statewide and congressional primary election in nine weeks.

14. In order to accomplish this, the Court would need to order a time period for circulating and filing nomination petitions that lasted two weeks, instead of three; and the nominations period would need to start on March 1, spanning two weeks and ending on the recommended revised deadline of March 15.

15. Ideally, the Department and county boards of elections would have an opportunity, before the circulation and filing of nomination petitions begin, to fully update the Statewide Uniform Registry of Electors (SURE) system with information about the new districts. In that event, the computerized tool used to generate nomination petitions would allow candidates to pre-populate all the information needed on the Candidate's Affidavit, as well as the information needed in the preamble portion of the nomination petition page, based on the specific office the candidate is seeking. By contrast, with generic nomination petitions, candidates running in particular districts must manually fill in the District Number line on the Candidate's Affidavit and the District Number line and County of

Signers lines at the top of each nomination petition page. These two lines will be blank when the petition forms are generated and printed. Nonetheless, the computerized tool used to generate the generic nomination petitions will still pre-populate the rest of the information for the candidate's review.

16. The Department believes that, by using generic nomination petitions, the Department could complete its preparations for circulating and filing nomination petitions quickly and in only a couple of days, by March 1, 2022.

17. Although the use of generic nomination petitions is less than ideal, it will allow the election process to proceed in a timely manner, as necessitated under the unusual circumstances of the current election cycle.

18. If the first date for circulating and filing nomination petitions for statewide and congressional races were moved from February 15 to March 1, the Department would need to have a final congressional plan in place by no later than **February 27, 2022**.

19. The Legislative Reapportionment Commission ("LRC") adopted a Final Plan for the legislative districts on February 4, 2022. If this Court were to expedite any briefing and argument on the appeals and enter a final ruling on the legislative Final Plan by **March 18, 2022**, the May 17 primary date could (if the Final Plan is determined to be lawful) also remain in place for the state legislative races.

20. The Court would also need to order a period for circulating and filing nomination petitions that lasted nine days, instead of three weeks; and the nominations period would need to start on March 20, spanning nine days and ending on the recommended revised deadline of March 29.

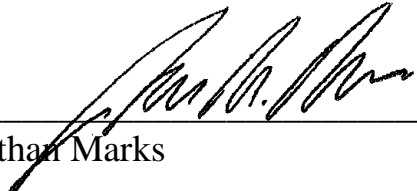
21. Finally, the Court would need to adjust the date by which the County Boards of Elections must send remote military-overseas absentee ballots from March 28, 2022 to April 2, 2022, to allow time for the Secretary to conduct the lottery to determine the position of candidate names and order in which the names will appear on the primary ballot before the remote military-overseas absentee ballots must go out. For administrative efficiencies and to align the calendars as much as possible, it would be preferable to have April 2, 2022, as the deadline for this task under the congressional calendar as well.

22. Having separate primaries would likely cause voter confusion, depress voter participation, and cost taxpayers tens of millions of dollars, and would present county election offices with significant logistical challenges, including the recruitment of poll workers.

23. Should the Court modify existing deadlines, the Department will make every effort to comply with any schedule that the Court puts in place.

The foregoing is true and correct to the best of my knowledge, information, and belief and is subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: February 14, 2022



Jonathan Marks

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM C. TOTH JR., ET. AL.	:	No. 1:22-cv-00208-JPW
	:	
Plaintiffs	:	
	:	
v.	:	
LEHIGH M. CHAPMAN, ET. AL.	:	
	:	
Defendant	:	

DECLARATION OF JAMES BOGNET

Under 28 U.S.C. § 1746, I, James Bognet, make this declaration as follows:

1. I am a Republican candidate for United States Congress.
2. In 2020, I won the Republican primary for Pennsylvania’s 8th Congressional District.
3. The incumbent in the 8th Congressional District is Matthew Cartwright, a Democrat.
4. The absence of a lawful Congressional map for the Commonwealth of Pennsylvania’s 2022 Congressional election prevents me from fully and effectively campaigning for Congress.
5. First, because there is no lawful Congressional map I am uncertain as to the precise geographic contours of my Congressional District.
6. Therefore, I do not know which voters will be my constituents and cannot direct my campaign efforts and resources towards them.
7. Second, it is not clear who my opponent or opponents will be.

8. Indeed, it is possible that my Congressional district will be redrawn to place me within a Congressional district that has an incumbent Republican.

9. This uncertainty hinders my ability to craft a targeted and specific campaign strategy and campaign message.

10. This uncertainty introduces obstacles to raising money most effectively from donors.

11. Many donors want to know the particulars of a race before committing financial resources to it.

12. Some donors are reluctant to finance a campaign without knowing who the opponent will be or what the geographic boundaries of the district are.

13. This uncertainty also places the incumbent at a dramatic advantage because it limits the ability of challengers, like me, to provide voters with a meaningful choice.

14. By making it more difficult to raise money, it is more challenging for me to broadcast my campaign message to voters.

15. Without knowing my district boundaries and who my constituents will be, I cannot begin advertising because I do not know who to direct my advertising towards.

16. At this point before the primary, I should be running radio and television ads.

17. Furthermore, the Pennsylvania Supreme Court's February 9, 2022, order suspending the circulation of nomination petitions has prevented me from gathering even 1 of the 1,000 signatures needed to appear on the primary ballot.

18. Once the suspension is lifted, I do not know how long I will have to obtain the 1,000 signatures.

19. Gathering signatures is a labor-intensive task and not knowing when I can begin obtaining signatures for my nomination petitions and how long I will have to obtain those signatures negatively effects my campaign.

20. A lack of a lawful Congressional map for the 2022 Congressional election and the Pennsylvania Supreme Court's February 9, 2022, Order have prohibited me from running a full and effective campaign with the May 17, 2022, primary approaching, thereby inflicting irreparable injury.

21. I declare, certify, verify, and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

James Bognet

James Bognet (Feb 19, 2022 23:21 EST)

JAMES BOGNET

Date: **Feb 19, 2022**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM C. TOTH JR., ET. AL.	:	No. 1:22-cv-00208-JPW
	:	
Plaintiffs	:	
	:	
v.	:	
LEHIGH M. CHAPMAN, ET. AL.	:	
	:	
Defendant	:	

DECLARATION OF AARON BASHIR

Under 28 U.S.C. § 1746, I, Aaron Bashir, make this declaration as follows:

1. I am a Philadelphia Republican City Committee endorsed candidate for United States Congress for the Second Congressional District of Pennsylvania.
2. The incumbent in the Second Congressional District is Brendan Boyle, a Democrat.
3. The absence of a lawful Congressional map for the Commonwealth of Pennsylvania's 2022 Congressional election prevents me from meaningfully campaigning for Congress.
4. First, because there is no lawful Congressional map I am uncertain as to the precise geographic contours of my Congressional District.
5. Therefore, I do not know which voters will be my constituents and cannot direct my campaign efforts and resources towards them.
6. Second, it is not clear who my opponent will be.

7. This prevents me from devising an effective campaign strategy and campaign message.

8. It also makes it more difficult to raise money from donors to finance my campaign.

9. Many donors want to know the particulars of a race before committing financial resources to it.

10. Without financial resources, I cannot finance my campaign and my ability to broadcast my campaign message to voters is greatly diminished as I cannot pay staff, purchase advertising, and print campaign literature.

11. Furthermore, the Pennsylvania Supreme Court's February 9, 2022, order suspending the circulation of nomination petitions has prevented me from gathering the 1,000 signatures needed to appear on the primary ballot.

12. Once the suspension is lifted, I do not know how long I will have to obtain the 1,000 signatures.

13. I must obtain signatures from only registered Republican voters.

14. Registered Democratic voters outnumber registered Republican voters by nearly 7 to 1 in the City of Philadelphia.

15. This means each day counts in obtaining signatures to appear on the ballot, especially for Republican candidates in Philadelphia.

16. Gathering signatures is a labor-intensive task and not knowing when I can begin obtaining signatures for my nomination petition and how long I will have to obtain those signatures inflicts irreparable injury on my campaign.

17. A lack of a lawful Congressional map for the 2022 Congressional election and the Pennsylvania Supreme Court's February 9, 2022, Order have placed my campaign in limbo with the May 17, 2022, primary approaching.

18. I declare, certify, verify, and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Aaron Bashir (Feb 18, 2022 22:51 EST)

AARON BASHIR

Date: Feb 18, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM C. TOTH JR., ET. AL.	:	No. 1:22-cv-00208-JPW
	:	
Plaintiffs	:	
	:	
v.	:	
LEHIGH M. CHAPMAN, ET. AL.	:	
	:	
Defendant	:	

DECLARATION OF ALAN HALL

Under 28 U.S.C. § 1746, I, Alan Hall, make this declaration as follows:

1. I am a member of the Susquehanna County Board of Elections.
2. I oversee the lawful administration of all aspects of elections, including voter registration, the voting process, and tabulation of votes.
3. I also certify the results of all primary and general elections in the county to the Secretary of State.
4. I must ensure that elections are honestly, efficiently, and uniformly conducted.
5. I currently cannot prepare for the upcoming May 2022 primary because the defendants have refused to implement a statewide election for Congressional candidates, as required by 2 U.S.C. § 2a(c)(5).
6. The Pennsylvania Supreme Court’s February 9, 2022, Order has also affected my ability to prepare for the 2022 Primary Election and fulfil my official duties.

7. My office does not know when we will begin receiving nomination petitions for candidates.

8. Susquehanna County is a small class 6 county with limited human resources and, therefore, needs to adequately plan staffing levels to process nomination petitions.

9. Once nomination petitions are processed and candidates declare officially on the ballot, my office will need at least several days to print ballots.

10. Importantly, the Uniformed and Overseas Citizens Absentee Voting Act requires that my office send ballots to overseas military members at least 45 days before the primary election.

11. The Pennsylvania Supreme Court's compression of the General Primary Election calendar threatens my ability to fulfill those obligations arising under federal law, thereby inflicting irreparable injury.

12. My office will need sufficient time to prepare absentee ballots for overseas military personnel and this cannot be accomplished in a handful of days.

13. I declare, certify, verify, and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Alan M Hall (Feb 19, 2022 10:05 EST)

ALAN HALL

Feb 19, 2022

Date: _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

William C. Toth Jr., et al.

Plaintiffs,

v.

Lehigh M. Chapman, et al.,

Defendants

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

**[PROPOSED] ORDER GRANTING MOTION FOR
TEMPORARY RESTRAINING ORDER OR PRELIMINARY
INJUNCTION**

The plaintiffs' motion for temporary restraining order or preliminary injunction is GRANTED. The Court concludes that the plaintiffs are likely to succeed on the merits of their claims that the defendants are violating the Elections Clause by failing to adhere to the General Primary Calendar prescribed by the Pennsylvania legislature, and by failing to implement at-large elections for the Pennsylvania congressional delegation as required by 2 U.S.C. § 2a(c)(5). The Court further concludes that the plaintiffs will suffer irreparable harm absent a TRO or preliminary injunction, that the balance of equities favors the enforcement of the Elections Clause, and that public interest supports immediate injunctive relief.

It is therefore ORDERED that:

1. Defendants Lehigh M. Chapman, Jessica Mathis, Tom Wolf, and their successors in office, along with their officers, agents, servants, employees, attorneys, designees, and subordinates, as well as any person acting in concert or participation with them, are ENJOINED from departing from the General Primary Calendar prescribed by the Pennsylvania legislature, with respect to any election for representatives or senators in the United States Congress, regardless of the Supreme Court of Pennsylvania's order of February 9, 2022, or any order of the Pennsylvania state judiciary.

2. Defendants Lehigh M. Chapman, Jessica Mathis, Tom Wolf, and their successors in office, along with their officers, agents, servants, employees, attorneys, designees, and subordinates, as well as any person acting in concert or participation with them, are ORDERED to hold at-large elections for the Pennsylvania congressional delegation, as required by the Elections Clause and 2 U.S.C. § 2a(c)(5), unless and until the General Assembly of Pennsylvania enacts a new congressional map;

3. Defendants Lehigh M. Chapman, Jessica Mathis, Tom Wolf, and their successors in office, along with their officers, agents, servants, employees, attorneys, designees, and subordinates, as well as any person acting in concert or participation with them, are ENJOINED from implementing any congressional map that might be drawn by the Supreme Court of Pennsylvania or any other state court.

4. Because the defendant will not suffer any financial loss on account of this preliminary injunction, there is no need for the plaintiff to post security under Rule 65(c) of the federal rules of civil procedure.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

Dated: _____, 2022

UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM C. TOTH JR., <i>et al.</i> ,	:	Civil No. 1:22-CV-00208
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
LEHIGH M. CHAPMAN, in her official	:	
capacity as Acting Secretary for the	:	
Commonwealth, <i>et al.</i> ,	:	
	:	
Defendants.	:	Judge Jennifer P. Wilson

ORDER

AND NOW, on this 21st day of February, 2022, following review of the request to convene a three-judge district court under 28 U.S.C. § 2284(a), Doc. 3, and the emergency motion for temporary restraining order or preliminary injunction, Doc. 8, **IT IS ORDERED AS FOLLOWS:**

- 1) Defendants shall file an expedited response to the request to convene a three-judge district court under 28 U.S.C. § 2284(a), Doc. 3, by letter brief not to exceed 3 pages by **5:00 p.m. on Thursday, February 24, 2022.** If no response is filed, the court will deem the request unopposed.
- 2) Plaintiffs shall file an expedited reply brief regarding the request to convene a three-judge district court under 28 U.S.C. § 2284(a), Doc. 3, by letter brief not to exceed 3 pages by **5:00 p.m. on Friday, February 25, 2022.**
- 3) Plaintiffs are ordered to correct the docketing error for the emergency motion for temporary restraining order or preliminary injunction, Doc. 8, by separately filing a motion and brief in accordance with Local Rules 7.1 and 7.5 by **5:00 p.m. on Wednesday, February 23, 2022.**
- 4) The court will convene an on-the-record telephone conference to discuss only the procedural and scheduling matters on Plaintiffs' emergency

motion for temporary restraining order or preliminary injunction, Doc. 8, on **Friday, February 25, 2022, at 11:15 a.m.** The parties shall connect to the conference call by calling (877) 336-1828, and using access code 2529544.

- 5) Plaintiffs' counsel is directed to serve this order on Defendants by **12:00 p.m. on Tuesday, February 22, 2022**, and shall file proof of service by 5:00 p.m. the same day.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Court Judge
Middle District of Pennsylvania

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
rwiygul@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

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.

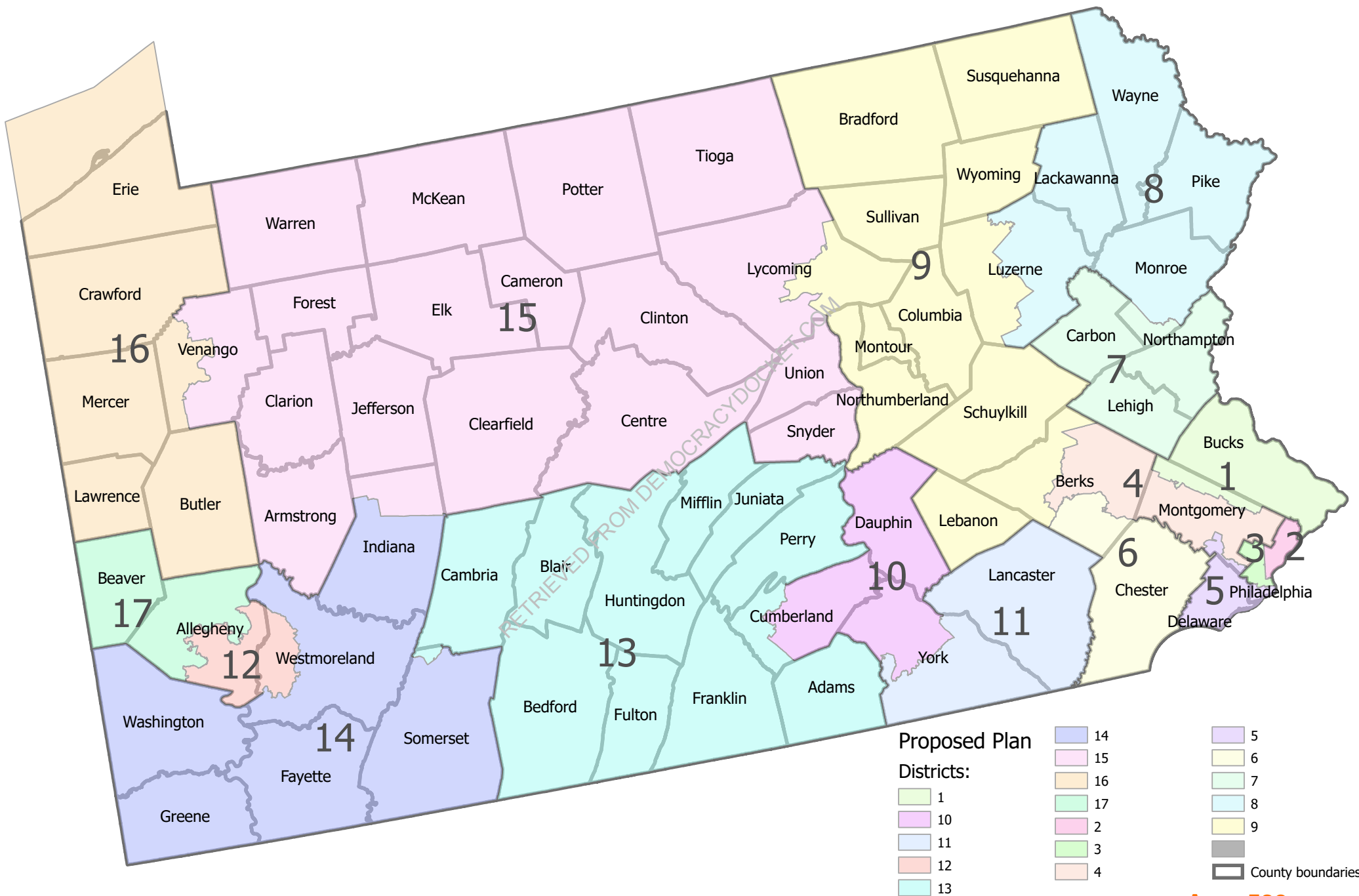
Sixth, the Secretary of the Commonwealth is directed to notify this Court by 4:00 p.m. on February 25, 2022, should it foresee any technical issues concerning the implementation of the Carter Plan.

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.



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

**BRIEF IN SUPPORT OF 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 state supreme court’s order patently violates the Elections Clause and 2 U.S.C. § 2a(c)(5), and it will inflict irreparable injury and lead to chaos unless the defendants are promptly enjoined from implementing it. The Court should immediately grant a TRO while it considers the plaintiffs’ request for preliminary-injunctive relief.

FACTS

Most of the relevant facts are set forth in the plaintiffs’ previous briefing. *See* Br. in Support of Emergency Motion for TRO and PI, ECF No. 11, at 3–5. But some additional developments have occurred since the plaintiffs moved for emergency relief on February 21, 2022.

On February 23, 2022, 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. *See id.*

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.” A copy of the state supreme court’s order is attached to this brief as Exhibit 1.

The plaintiffs respectfully renew their request for an emergency TRO in light of the state supreme court’s order, and they 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.

I. THE COURT SHOULD IMMEDIATELY ENJOIN THE DEFENDANTS FROM IMPLEMENTING THE COURT-DRAWN MAP AND ORDER THEM TO COMPLY WITH THE ELECTIONS CLAUSE AND 2 U.S.C. § 2a(c)(5)

In deciding whether to issue a TRO, a Court must consider four factors:

(1) whether the movant has “a reasonable probability of eventual success in the litigation”; (2) whether the movant “will be irreparably injured . . . if relief is not granted”; (3) “the possibility of harm to other interested persons from the grant or denial of the injunction”; and (4) “the public interest.” *Reilly v. City of Harrisburg*, 858 F.3d 173, 176–77 (3d Cir. 2017). All four factors favor immediate relief.

A. The Plaintiffs Are Likely To Succeed On The Merits

The state supreme court’s attempt to impose a court-drawn map for the 2022 congressional elections is a flagrant violation of the Elections Clause. Under the Constitution, only “the Legislature” of a state may “prescribe” the manner of electing its Senators and Representatives. *See* U.S. Const. art. I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”). The state judiciary is not part of “the Legislature,” so it cannot impose a congressional map or participate in the redistricting process unless it has been authorized to do so by “the Legislature.” *See Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015). The state supreme court’s actions usurp the legislature’s constitutionally assigned role, and the

Court should promptly enjoin the defendants from implementing the state supreme court's unconstitutional edict.

The defendants will also violate 2 U.S.C. § 2a(c)(5) if they implement the court-drawn map. 2 U.S.C. § 2a(c) provides:

Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: . . . (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

2 U.S.C. § 2a(c). The State has not yet been “redistricted in the manner provided by the law thereof,” because the General Assembly has not enacted a new congressional map, and the state supreme court's attempt to impose a court-drawn map violates the Elections Clause. The defendants must therefore conduct at-large elections unless and until the General Assembly enacts a new congressional map. That is especially true when the Supreme Court of Pennsylvania had to disrupt the General Primary Election calendar to accommodate its court-imposed redistricting plan. *See Branch v. Smith*, 538 U.S. 254, 273–76 (2003) (plurality opinion of Scalia, J.) (holding that 2 U.S.C. § 2a(c) is triggered when “the election is so imminent that no entity competent to complete redistricting pursuant to state law . . . is able to do so without disrupting the election process”).

B. The Plaintiffs Will Suffer Irreparable Harm Absent Relief From This Court

The plaintiffs have explained the irreparable harms that they will suffer in their previous briefing and declarations. *See* Br. in Support of Emergency Motion for TRO and PI, ECF No. 11, at 12–13; *see also* Bognet Decl. (ECF No. 11-10); Bashir Decl. (ECF No. 11-11); Hall Decl. (ECF No. 11-12). The state supreme court’s order from this morning aggravates those harms by forcing Bognet and Bashir to campaign for office under an unconstitutional court-drawn map, which is likely to be declared unconstitutional and undone at the conclusion of these proceedings. The uncertainty surrounding whether they will need to campaign for office in statewide at-large elections, in the districts drawn by the state supreme court, or in districts drawn by subsequent legislative enactments inflicts irreparable harm on the candidates and their campaigns. Plaintiff Alan Hall is also suffering irreparable harm because the state supreme court’s edict will force him to depart from the General Primary Calendar that the legislature enacted, in violation of the U.S. Constitution and in contravention of his oath to obey the Constitution. Finally, each of the five plaintiffs will suffer irreparable harm because the state supreme court’s order deprives them of their right to vote for all 17 members of the Pennsylvania congressional delegation under 2 U.S.C. § 2a(c)(5).

C. The Balance Of Equities Favors A TRO Or Preliminary Injunction

The balance of equities favors an immediate TRO because it is clear that any action taken to implement the state supreme court’s order will violate the

Elections Clause and 2 U.S.C. § 2a(c)(5), and the need to enforce the Constitution and federal law outweighs any harms that might befall others from an injunction. *See Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 597 (3d Cir. 2002) (“[T]he more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor.” (citation and internal quotation marks omitted)).

D. The Public Interest Favors A TRO Or Preliminary Injunction

A preliminary injunction will ensure that the Constitution and 2 U.S.C. § 2a(c)(5) are obeyed, which is by definition in the public interest. *See Osorio-Martinez v. Attorney Gen. United States of Am.*, 893 F.3d 153, 179 (3d Cir. 2018); *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 884 (3d Cir. 1997).

II. IMMEDIATE INJUNCTIVE RELIEF IS NEEDED TO ENSURE THAT THE LEGISLATURE AND GOVERNOR NEGOTIATE A NEW MAP AGAINST THE BACKDROP OF 2 U.S.C. § 2a(c)(5)

The Court should also order immediate injunctive relief to ensure that the General Assembly and Governor Wolf can negotiate a new congressional map against the backdrop of 2 U.S.C. § 2a(c)(5). By requiring at-large elections in the event of an impasse between the legislature and governor, 2 U.S.C. § 2a(c)(5) creates strong incentives for compromise among rival factions of state governments. But the Supreme Court of Pennsylvania has removed any incentive for Governor Wolf to negotiate or compromise with the Republican-controlled legislature. The governor knew from the outset that an impasse

would lead to a court-drawn map—and that this a map would be drawn by a state supreme court with a 5-2 Democratic majority. The state supreme court rewarded the governor’s intransigence by adopting a congressional map proposed by the Elias Law Group, an outcome that the state’s Democrats could have only dreamed of obtaining from a Republican-controlled legislature. The Court should immediately enforce the command of 2 U.S.C. § 2a(c)(5), which will compel the legislature and Governor Wolf to agree quickly on a new map (and a modified primary schedule) and avoid the spectacle of at-large elections for the state’s 17 congressional representatives.

CONCLUSION

The emergency motion for TRO should be granted, and the Court should immediately enjoin the defendants from implementing the state supreme court’s order of February 23, 2022.

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
rwiygul@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

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.

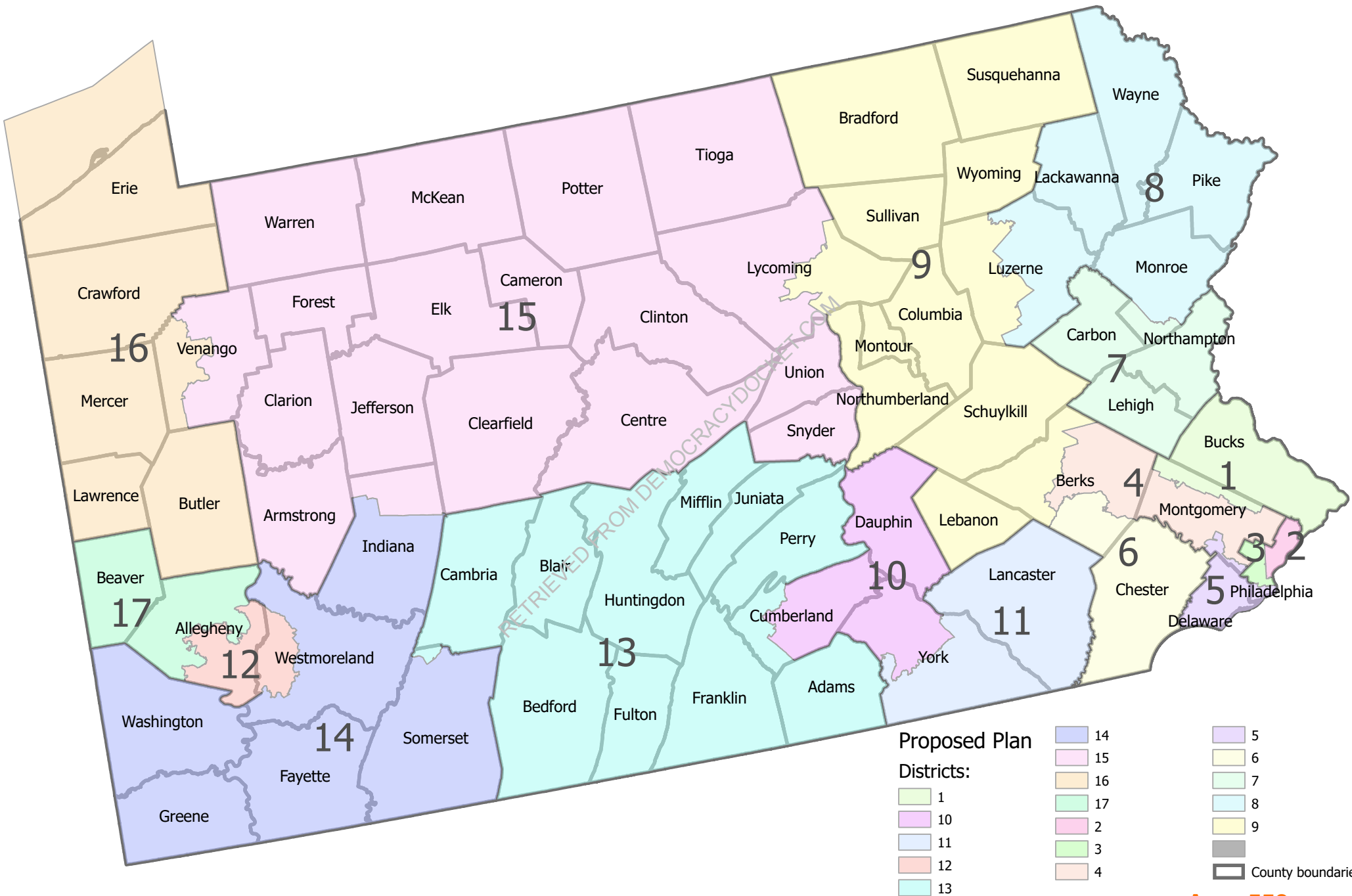
Sixth, the Secretary of the Commonwealth is directed to notify this Court by 4:00 p.m. on February 25, 2022, should it foresee any technical issues concerning the implementation of the Carter Plan.

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.



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

**ORDER GRANTING EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER**

The plaintiffs' emergency motion for temporary restraining order and preliminary injunction is GRANTED. The Court concludes that the plaintiffs are likely to succeed on the merits of their claims that the defendants are violating the Elections Clause by failing to adhere to the General Primary Calendar prescribed by the Pennsylvania legislature, and by failing to implement at-large elections for the Pennsylvania congressional delegation as required by 2 U.S.C. § 2a(c)(5). The Court further concludes that the plaintiffs will suffer irreparable harm absent a TRO or preliminary injunction, that the balance of equities favors the enforcement of the Elections Clause, and that public interest supports immediate injunctive relief.

It is therefore ORDERED that:

1. Defendants Leigh M. Chapman, Jessica Mathis, Tom Wolf, and their successors in office, along with their officers, agents, servants, employees, attorneys, designees, and subordinates, as well as any person acting in concert or participation with them, are ENJOINED from departing from the General Primary Calendar prescribed by the Pennsylvania legislature, with respect to any election for representatives or senators in the United States Congress, regardless of the Supreme Court of Pennsylvania's order of February 23, 2022, or any order of the Pennsylvania state judiciary.

2. Defendants Leigh M. Chapman, Jessica Mathis, Tom Wolf, and their successors in office, along with their officers, agents, servants, employees, attorneys, designees, and subordinates, as well as any person acting in concert or participation with them, are ORDERED to hold at-large elections for the Pennsylvania congressional delegation, as required by the Elections Clause and 2 U.S.C. § 2a(c)(5), unless and until the General Assembly of Pennsylvania enacts a new congressional map;

3. Defendants Leigh M. Chapman, Jessica Mathis, Tom Wolf, and their successors in office, along with their officers, agents, servants, employees, attorneys, designees, and subordinates, as well as any person acting in concert or participation with them, are ENJOINED from implementing the congressional map adopted by the Supreme Court of Pennsylvania's order of February 23, 2022, any congressional map that might be drawn by the Supreme Court of Pennsylvania or any other state court.

4. Because the defendant will not suffer any financial loss on account of this preliminary injunction, there is no need for the plaintiff to post security under Rule 65(c) of the federal rules of civil procedure.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

Dated: _____, 2022

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM C. TOTH JR., ET. AL.	:	No. 1:22-cv-00208-JPW
	:	
Plaintiffs	:	
	:	
v.	:	
LEIGH M. CHAPMAN, ET. AL.	:	
	:	
Defendant	:	

DECLARATION OF AARON BASHIR

Under 28 U.S.C. § 1746, I, Aaron Bashir, make this declaration as follows:

1. I am a Philadelphia Republican City Committee endorsed candidate for United States Congress for the Second Congressional District of Pennsylvania.
2. The incumbent in the Second Congressional District is Brendan Boyle, a Democrat.
3. According to registration records, the Second Congressional District has a +44% Democratic voter-registration advantage.¹
4. The Pennsylvania Supreme Court’s order of February 23, 2022, inflicts irreparable harm by forcing me to run in a congressional district with a massive Democratic voter-registration advantage, rather than in a statewide at-large election where the number of Democratic and Republican voters are more evenly split.

¹ https://projects.fivethirtyeight.com/redistricting-2022-maps/pennsylvania/preliminary_plan (last visited February 24, 2022)

5. The Pennsylvania Supreme Court's order of February 23, 2022, inflicts additional irreparable harm because the court-drawn map is unconstitutional under the Elections Clause and 2 U.S.C. § 2a(c)(5), and there is a serious risk that a federal court or the Supreme Court of the United States will declare the map unlawful after I have spent time and resources campaigning in the court-drawn congressional district. Preliminary-injunctive relief is needed to remove this uncertainty.

6. The lingering uncertainty over the legality and constitutionality of the court-drawn map inflicts additional irreparable harm by making it difficult to raise money from donors to finance my campaign.

7. Many donors want to know the particulars of a race before committing financial resources to it. Yet it remains unclear whether the court-imposed map will be used for the 2022 elections because the state supreme court's order of February 23, 2022, is patently unconstitutional and is likely to be declared so at the conclusion of this litigation or in other lawsuits or appeals that challenge the legality of the state supreme court's actions.

8. Without financial resources, I cannot finance my campaign and my ability to broadcast my campaign message to voters is greatly diminished as I cannot pay staff, purchase advertising, and print campaign literature.

9. I declare, certify, verify, and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Aaron Bashir (Feb 24, 2022 20:47 EST)

AARON BASHIR

Date: Feb 24, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM C. TOTH JR., ET. AL.	:	No. 1:22-cv-00208-JPW
	:	
Plaintiffs	:	
	:	
v.	:	
LEHIGH M. CHAPMAN, ET. AL.	:	
	:	
Defendant	:	

DECLARATION OF ALAN HALL

Under 28 U.S.C. § 1746, I, Alan Hall, make this declaration as follows:

1. I am a member of the Susquehanna County Board of Elections.
2. I oversee the lawful administration of all aspects of elections, including voter registration, the voting process, and tabulation of votes.
3. I also certify the results of all primary and general elections in the county to the Secretary of State.
4. I must ensure that elections are honestly, efficiently, and uniformly conducted.
5. The Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20302(a)(8)(A) requires that my office send ballots to overseas military members at least 45 days before the primary election.
6. This year the deadline is April 2, 2022, which is a Saturday.
7. Under the Pennsylvania Supreme Court’s revised general election calendar, I do not anticipate having a certified list of candidates until March 29, 2022,

which is the deadline for the Pennsylvania Supreme Court imposed on the Pennsylvania Commonwealth Court to resolve all objections to nomination petitions.

8. That means my office would have only 1 or 2 days to prepare and mail overseas military absentee ballots to comply with federal law.

9. As previously stated, Susquehanna County is a small county with limited staff.

10. The Pennsylvania Supreme Court's decision places me at risk of violating federal law thereby inflicting irreparable injury.

11. The Pennsylvania Supreme Court's decision places overseas military members at risk of disenfranchisement because they might not get their ballots timely, thereby inflicting irreparable injury.

12. The Pennsylvania Supreme Court's compression of the General Primary Election calendar threatens my ability to fulfill those obligations arising under federal law, thereby inflicting irreparable injury.

13. I declare, certify, verify, and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



[Alan M Hall \(Feb 24, 2022 06:09 EST\)](#)

ALAN HALL

Date: Feb 24, 2022

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM C. TOTH JR., <i>et al.</i> ,	:	Civil No. 1:22-CV-00208
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
LEHIGH M. CHAPMAN, in her official capacity as Acting Secretary for the Commonwealth, <i>et al.</i> ,	:	
	:	
Defendants.	:	Judge Jennifer P. Wilson

ORDER

AND NOW, on this 25th day of February, 2022, following an on-the-record telephone conference held on this date, **IT IS ORDERED AS FOLLOWS:**

- 1) Plaintiffs’ motions for temporary restraining order, Docs. 10 & 30, are **DENIED** because the court will not grant a temporary restraining order on the expedited basis requested by Plaintiffs prior to resolving the jurisdictional issues raised by Defendants and potential Intervenors.¹ In lieu of granting a temporary restraining order, the court establishes the expedited schedule below to resolve all jurisdictional issues and, if appropriate, the merits of Plaintiffs’ motion for preliminary injunction, Doc. 10.

- 2) Motion(s) to dismiss on jurisdictional grounds, at a minimum, as well as brief(s) in support thereof, shall be filed by **5:00 p.m. on Tuesday, March 1, 2022.** As discussed during the telephone conference, this deadline is established without prejudice to the filing of an additional motion to dismiss by the deadline established by the Federal Rules of Civil Procedure.

¹ It is appropriate for the court to make this ruling prior to resolving the request to convene a three-judge district court pursuant 28 U.S.C. § 2284(b)(3).

- a. Plaintiffs shall file one consolidated brief in opposition to the motion(s) to dismiss by **5:00 p.m. on Friday, March 4, 2022.**
 - b. Any reply briefs shall be filed by **5:00 p.m. on Saturday, March 5, 2022.**
- 3) Brief(s) in opposition to Plaintiffs' expedited motion for preliminary injunction, Doc. 10, shall be filed by **5:00 p.m. on Tuesday, March 8, 2022.**
- a. Plaintiffs may file one consolidated reply brief in support of their motion, Docs. 10, by **5:00 p.m. on Thursday, March 10, 2022.**
- 4) A hearing on Plaintiffs' expedited motion for preliminary injunction, Doc. 10, is scheduled for **Friday, March 11, 2022, at 1:00 p.m.** This hearing date is subject to change depending on whether a three-judge district court is convened and the availability of the two other presiding judges.

s/Jennifer P. Wilson

JENNIFER P. WILSON
United States District Court Judge
Middle District of Pennsylvania

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

William C. Toth Jr., et al.

Plaintiffs,

v.

Leigh M. Chapman, et al.,

Defendants

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

**MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

The plaintiffs respectfully ask for leave to file a second amended complaint. The plaintiffs' first amended complaint was filed before the Supreme Court of Pennsylvania issued its order of February 23, 2022, which purports to adopt the Carter Plan as the state's congressional map. The second amended complaint will ask the Court to declare the Carter Plan unconstitutional and enjoin the defendants from implementing or enforcing it. The second amended complaint will also allege that the Carter Plan violates the equal-population rule established in *Wesberry v. Sanders*, 376 U.S. 1 (1964), because it contains two-person deviations among congressional districts.

Rule 15(b) allows a party to seek leave to amend "at any time, even after judgment . . . to conform [the pleadings] to the evidence and to raise an unpleaded issue." Fed. R. Civ. P. 15(b). And a court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave to amend is

appropriate and consistent with justice because the circumstances of this case have changed now that the Supreme Court of Pennsylvania has issued an order purporting to adopt the Carter Plan, and the defendants intend to implement the Carter Plan as the state's congressional map.

We have attached a proposed order to this motion, and we will file a copy of the proposed second amended complaint (along with its exhibits) as a separate ECF filing.

CONCLUSION

The plaintiffs' motion for leave to file a second amended complaint should be granted.

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

Counsel for Plaintiffs

Dated: February 26, 2022

CERTIFICATE OF CONFERENCE

I certify that I conferred with Robert A. Wiygul, counsel for the defendants, and he informed me that the defendants oppose this motion.

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

CERTIFICATE OF SERVICE

I certify that on February 26, 2022, I filed this document on CM/ECF, which will effectuate service upon the following counsel of record:

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
rwiygul@hangley.com
crice@hangley.com
jhill@hangley.com

JOSHUA A. MATZ
Kaplan, Hecker & Fink
1050 K Street NW, Suite 1040
Washington, DC 20001
(929) 294-2537
jmatz@kaplanhecker.com

Counsel for Defendants

ABHA KHANNA
LALITHA D. MADDURI
JYOTI JASRASARIA
TINA Y. MENG
Elias Law Group LLP
1700 Seventh Ave., Suite 2100
Seattle, Washington 98101
(206) 656-0177
akhanna@elias.law
lmadduri@elias.law
jjasrasaria@elias.law
tmeng@elias.law

ELIZABETH WINGFIELD
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103
(215) 665-8500 (phone)
(215) 864-8999 (fax)
wingfelde@ballardspahr.com

Counsel for Proposed Intervenors

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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

William C. Toth Jr., et al.

Plaintiffs,

v.

Leigh M. Chapman, et al.,

Defendants

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

**ORDER GRANTING MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

The plaintiffs' motion for leave to file second amended complaint is GRANTED. The proposed second amended complaint that the plaintiffs filed as Docket Entry No. 49 shall be accepted and regarding as the active pleading in this litigation.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

Dated: _____, 2022

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

William C. Toth Jr.; William J. Hall; Howard Gartland; James Bognet; Aaron Bashir; Alan M. Hall,

Plaintiffs,

v.

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

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth; **Jessica Mathis**, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries; **Tom Wolf**, in his official capacity as Governor of Pennsylvania,

Defendants

SECOND AMENDED COMPLAINT

The state of Pennsylvania lost a congressional seat in the most recent decennial census. The Pennsylvania legislature must therefore draw a new congressional map for the 2022 elections. Under the U.S. Constitution, the “legislature” in each state is charged with prescribing the “times, places, and manner” of electing Senators and Representatives, although Congress may enact laws to “make or alter such regulations.” *See* U.S. Const. art. I, § 4, cl. 1 (“The

Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”). That means the state legislature must either enact a new congressional map or delegate its map-creation authority to another institution. *See, e.g., Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015).

But the Pennsylvania legislature has not yet enacted a congressional map for the 2022 elections. Earlier this year, the Republican-led General Assembly passed a reasonable, non-gerrymandered map that would have created a 9-8 majority of *Democratic*-leaning congressional districts. *See* Exhibit 9 at p. 47 (picture of map); *id.* at p. 211 (¶¶ 78–79). But Governor Wolf vetoed the map, despite its Democratic tilt, complaining that this 9-8 Democratic map was “unfair” and insufficiently “bipartisan.”¹ *See Smiley v. Holm*, 285 U.S. 355 (1932) (redistricting legislation that is vetoed by the governor is not “prescribed . . . by the Legislature” within the meaning of the Elections Clause). In the meantime, a group of litigants represented by the Elias Law Group repaired to state court in an effort to induce the Supreme Court of Pennsylvania—which has a 5-2 Democratic majority—to impose a more partisan Democratic congressional map for the 2022 elections. *See* Exhibit 1 (state-court petition); Exhibit 5 (state-court brief in support).

1. Governor Wolf’s veto statement can be found at: <https://bit.ly/33WvHW7>.

The Elias proposal—also known as the “Carter Plan”—would create a 10-7 majority of Democratic-leaning congressional districts, rather than the 9-8 Democratic majority in the map approved by the General Assembly. *See* Exhibit 5 at p. 24. It would also place two Republican incumbents in the same congressional district, ensuring that at least one incumbent Republican will be eliminated from the state’s congressional delegation. *See* Exhibit 9 at p. 195 (¶ 32). The General Assembly’s map, by contrast, would have placed a Democratic and a Republican incumbent in a single congressional district, an approach that does not “seek to obtain an unfair partisan advantage through incumbent pairings.” Exhibit 9 at p. 210 (¶ 68).

The Supreme Court of Pennsylvania appointed a special master to consider the 13 different congressional maps that had been proposed by litigants and amici in the state-court litigation, including the “Carter Plan” and the map that the General Assembly had approved. The special master recommended that the state supreme court adopt the General Assembly’s proposed map for the 2022 elections, which was “subjected to the scrutiny of the people and duly amended.” *See* Exhibit 9, p. 216. The special master also commended the Republican-led General Assembly for proposing a Democratic-leaning map, which “underscores its partisan fairness.” Exhibit 9, p. 216 (¶ 97). But on February 23, 2022, the state supreme court, in a 4-3 vote, overruled the special master and purported to “adopt” the Carter Plan as the state’s congressional map. *See* Exhibit 11. And the state’s election officials intend to implement this Carter Plan for the 2022 elections.

But any attempt by the defendants to implement the Carter Plan is flatly unconstitutional. The Elections Clause says that “the Legislature”—not the judiciary—must “prescribe” the manner of electing representatives, and the General Assembly has not adopted or approved the Carter Plan as the state’s congressional map. More importantly, the General Assembly has not authorized the state judiciary to draw congressional maps or participate in the redistricting process in any way. The state judiciary must therefore wait for the General Assembly to act. And any attempt by the state judiciary to usurp the legislature’s constitutionally assigned role must be disregarded by state officials, who are compelled to honor the Elections Clause over any contrary edicts that might emanate from a state court.

The Carter Plan is unconstitutional for an additional reason: It violates the equal-population rule that the Supreme Court established in *Wesberry v. Sanders*, 376 U.S. 1 (1964). The congressional districts in the Carter Plan contain *two*-person deviations, which is constitutionally impermissible when it remains possible to draw a map that contains no more than one-person deviations among the proposed districts:

Equal Population: Based on the 2020 Census, the ideal population of each congressional district is 764,865. The Carter Plan includes 4 districts with the ideal population and 13 districts with a deviation of plus or minus one person. District-level details are provided in Table 4.

Table 4: District Population Deviations⁵

District	Population	Deviation from Ideal
1	764866	1
2	764865	0
3	764864	-1
4	764865	0
5	764866	1
6	764864	-1
7	764865	0
8	764866	1
9	764864	-1
10	764864	-1
11	764864	-1
12	764864	-1
13	764864	-1
14	764866	1
15	764864	-1
16	764865	0
17	764864	-1

Exhibit 5, p. 21 *see also* Exhibit 9 at p. 192 (¶ 18) (“[U]nlike the other plans that have a maximum population deviation of one person, the Carter Plan and the House Democratic Plan both result in districts that have a two-person deviation.”); *id.* at 195 (¶ 34) (describing the Carter Plan as “contrary to . . . United States Supreme Court precedent.”); *Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969) (“*Wesberry v. Sanders* . . . requires that the State make a good-faith effort to achieve precise mathematical equality.”); *Evenwel v. Abbott*, 578 U.S. 54, 59 (2016) (“States must draw congressional districts with populations as close to perfect equality as possible.”). The map passed by the General Assem-

bly, by contrast, would limit population deviation among congressional districts to no more than one person, consistent with the Supreme Court's equal-population rule:

Difference between Preliminary Map and Updated Preliminary Map by Population			
District	Final Population	Unchanged Population	Preliminary Districts that Remains Unchanged
1	764,865	764,865	100.00%
2	764,865	727,974	95.18%
3	764,865	727,974	95.18%
4	764,865	764,865	100.00%
5	764,865	665,110	86.96%
6	764,865	664,660	86.90%
7	764,864	744,414	97.33%
8	764,864	745,298	97.44%
9	764,864	710,269	92.86%
10	764,865	685,726	89.65%
11	764,865	745,299	97.44%
12	764,865	720,103	94.15%
13	764,864	642,606	84.02%
14	764,865	741,290	96.92%
15	764,864	764,864	100.00%
16	764,865	755,133	98.73%
17	764,865	741,290	96.92%
		Average Same	95%

Exhibit 6 at p. 31. So the Carter Plan is unconstitutional coming and going, and it cannot be implemented consistent with the Elections Clause or the equal-population rule from *Wesberry*. The Court should declare the Carter Plan unconstitutional and immediately enjoin its enforcement.

None of this means that Pennsylvania will be unable to conduct elections for its congressional delegation. If the General Assembly fails to enact a new congressional map in time for the 2022 elections, then the remedy is set forth

in 2 U.S.C. § 2a(c): The state’s congressional delegation shall be elected at-large:

Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: . . . (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

2 U.S.C. § 2a(c). The Elections Clause requires state officials to implement this congressional instruction if the General Assembly fails to enact a new congressional map in time for the 2022 elections. Congress, in enacting 2 U.S.C. § 2a(c)(5), has “ma[de] . . . Regulations” that govern the election of representatives pursuant to its authority under the Elections Clause, and state election officials are constitutionally obligated to follow this congressional command over any contrary instructions that might appear in a state-court ruling.

The notion that the Supreme Court of Pennsylvania can replace the fallback regime that Congress has established in 2 U.S.C. § 2a(c)(5) with a congressional map of its own creation violates the Constitution in at least two respects. First, it usurps the authority that the Elections Clause assigns to the state legislature, because the Elections Clause gives “the Legislature” and not the judiciary the power to “prescribe” the manner of electing representatives. Second, it usurps the authority that the Elections Clause confers upon Congress, because Congress has enacted a statute requiring Pennsylvania’s representatives to be elected at large if the General Assembly fails to enact a map in

time for the 2022 elections. The Court should therefore enter declaratory and injunctive relief that enjoins the defendants from implementing or enforcing the Carter Plan. And it should compel the defendants to hold at-large elections for the 2022 Pennsylvania congressional delegation, notwithstanding any ruling that might issue from the Supreme Court of Pennsylvania, unless and until the General Assembly enacts a new congressional map.

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

2. Venue is proper in this district and division because a substantial portion of the events or omissions giving rise to the present claim occurred in this district and division. *See* 28 U.S.C. § 1391(b)(2).

3. The plaintiffs request a three-judge panel under 28 U.S.C. § 2284(a) because this action is challenging to the constitutionality of the apportionment of congressional districts.

PARTIES

4. Plaintiff William C. Toth Jr. is a resident of Columbia County and a registered voter in Pennsylvania.

5. Plaintiff William J. Hall is a resident of Lycoming County and a registered voter in Pennsylvania.

6. Plaintiff Howard Gartland is a resident of Delaware County and a registered voter in Pennsylvania.

7. Plaintiff Jim Bognet is a resident of Luzerne County and a Republican candidate for Congress. He is also a registered voter in Pennsylvania.

8. Plaintiff Aaron Bashir is a resident of Philadelphia County and a Republican candidate for Congress. He is also a registered voter in Pennsylvania.

9. Plaintiff Alan M. Hall is resident of Susquehanna County and a member of the Susquehanna Board of Elections. He is also a registered voter in Pennsylvania.

10. Defendant Leigh M. Chapman is Acting Secretary of the Commonwealth of Pennsylvania. She may be served at 302 North Office Building, 401 North Street Harrisburg, Pennsylvania 17120. Acting Secretary Chapman is sued in her official capacity.

11. Defendant Jessica Mathis is Director for the Pennsylvania Bureau of Election Services and Notaries. She may be served at 210 North Office Building, 401 North Street Harrisburg, Pennsylvania 17120. Director Mathis is sued in her official capacity.

12. Defendant Tom Wolf is the governor of Pennsylvania. He may be served at the Office of the Governor, 508 Main Capitol Building, Harrisburg, Pennsylvania 17120. Governor Wolf is sued in his official capacity.

FACTS

13. Before the 2020 census, the state of Pennsylvania had 18 seats in the U.S. House of Representatives.

14. The results of the 2020 census left Pennsylvania with 17 seats in the U.S. House, one fewer than before. *See* U.S. Dept. of Commerce, Table 1. Apportionment Population and Number of Representatives by State: 2020 Census.

15. Under the Elections Clause of the U.S. Constitution, “the Legislature” of Pennsylvania must prescribe the “manner” by which its representatives are elected, while Congress “may at any time by Law make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1; *see also id.* (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”). The powers conferred by the Elections Clause include the prerogative to draw a new congressional map in response to the decennial census.

16. On August 20, 2021, the census-block results of the 2020 Census were delivered to Governor Wolf and the leaders of the General Assembly, which allowed the legislature to begin the process of drawing a new congressional map.

17. On December 15, 2021, the House State Government Committee approved a new congressional map (HB 2146), in a 14-11 vote. The General Assembly eventually passed HB 2146, but it was vetoed by Governor Wolf on January 26, 2022.

18. On December 17, 2021, a group of eighteen voters known as the “Carter petitioners” filed a lawsuit in the Commonwealth Court of Pennsylvania, asking the state judiciary to impose a map for the 2022 congressional elections. *See* Exhibit 1. Later that day, a separate group of twelve voters (the “Gressman petitioners”) filed a similar lawsuit in the Commonwealth Court.

19. The Commonwealth Court of Pennsylvania is the court of original jurisdiction for lawsuits involving the state and its officials.

20. The Commonwealth Court consolidated the two redistricting cases on December, 20, 2021, and the cases were assigned to Judge Patricia McCullough.

21. On December 21, 2021, the petitioners in those cases filed an application for extraordinary relief in the Supreme Court of Pennsylvania, asking the state supreme court to exercise extraordinary jurisdiction over the case. *See* Exhibit 2.

22. The Supreme Court of Pennsylvania has a 5-2 Democratic majority.

23. On January 10, 2022, the state supreme court declined to invoke its extraordinary jurisdiction and denied the application for extraordinary relief without prejudice. *See* Exhibit 3.

24. On January 14, 2022, Judge McCullough ordered all parties and intervenors to submit proposed maps and expert reports by January 24, 2022. Judge McCullough also scheduled an evidentiary hearing for January 27 and 28, 2022, and announced that if the General Assembly “has not produced a new congressional map by January 30, 2022, the Court shall proceed to issue an

opinion based on the hearing and evidence presented by the Parties.” *See* Exhibit 4.

25. On January 26, 2022, Governor Wolf vetoed HB 2146, a congressional map that had been approved by the General Assembly.

26. On January 27 and 28, 2022, Judge McCullough presided over the evidentiary hearings that had been scheduled in her order of January 14, 2022.

27. On January 29, 2022, the petitioners in the state redistricting lawsuit filed a new “emergency application” with the Supreme Court of Pennsylvania, asking the state supreme court to immediately exercise “extraordinary jurisdiction” and take over the redistricting litigation from Judge McCullough. *See* Exhibit 7.

28. On February 1, 2022, Judge McCullough announced that her ruling in the redistricting cases will issue no later than February 4, 2022.

29. On February 2, 2022, before Judge McCullough had issued her ruling, the Pennsylvania Supreme Court granted the application to exercise extraordinary jurisdiction in a 5-2 party-line vote.

30. The state supreme court’s order designated Judge McCullough to serve as its “Special Master,” and instructed her to file with the Supreme Court of Pennsylvania, on or before February 7, 2022, “a report containing proposed findings of fact and conclusions of law supporting her recommendation of a redistricting plan from those submitted to the Special Master, along with a proposed revision to the 2022 election schedule/calendar.” *See* Exhibit 8.

31. Justice Mundy and Justice Brobson, both Republicans, dissented from the state supreme court's order granting extraordinary relief and exercising extraordinary jurisdiction.

32. On February 7, 2022, Judge McCullough issued her findings and recommended that the map approved by the General Assembly (HB 2146) be used as the congressional map. *See* Exhibit 9.

33. Judge McCullough recommended HB 2146 from among the 13 plans that had been submitted for consideration by the parties and their amici. *See* Exhibit 9 at pp. 44–57 (describing the 13 competing plans and maps).

34. Judge McCullough rejected the Carter Plan because, among other reasons, it produces districts with a two-person deviation, which is unconstitutional when it remains possible to adopt other maps that contain no more than a one-person deviation. *See* Exhibit 9 at p. 192 (¶ 18) (“[U]nlike the other plans that have a maximum population deviation of one person, the Carter Plan and the House Democratic Plan both result in districts that have a two-person deviation.”); *id.* at 195 (¶ 34) (describing the Carter Plan as “contrary to . . . United States Supreme Court precedent.”); *id.* at 204 (“[T]his Court does not recommend adopting the Carter Plan for the congressional districts in the Commonwealth of Pennsylvania because . . . it has a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one person deviation”); *see also Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969) (“*Wesberry v. Sanders* . . . requires that the State make a good-faith effort to achieve precise mathematical equality.”);

Evenwel v. Abbott, 578 U.S. 54, 59 (2016) (“States must draw congressional districts with populations as close to perfect equality as possible.”).

35. Judge McCullough also rejected the Carter Plan because it would put two incumbent Republican incumbents into one congressional district:

[C]ontrary to every other map submitted, the Senate Democratic Caucus 1 Plan and the Carter Plan include two Republican incumbents in one congressional district, which effectively eliminates a Republican from continued representation in the United States House of Representatives. . . . [A]lthough Pennsylvania has already lost one congressional seat as a result of decreased population, the Senate Democratic Caucus 1 Plan and the Carter Plan, in effect, seek to preemptively purge a Republican Congressman from the 17 seats that . . . remain available for office.”).

Exhibit 9 at p. 195 (¶ 32–33); *see also id.* at pp. 204–05 (“[T]his Court does not recommend adopting the Carter Plan for the congressional districts in the Commonwealth of Pennsylvania because . . . without any explicit or apparent justification, it pairs two Republican incumbents in one congressional district and effectively eliminates a Republican from continued representation in the United States House of Representatives”).

36. And Judge McCullough also found that the Carter Plan “provides a partisan advantage to the Democratic party in contravention to the natural state of political voting behavior and bias towards Republicans in Pennsylvania.” Exhibit 9 at p. 205.

37. In recommending HB 2146 as the state’s congressional map, Judge McCullough acknowledged that the imposition of a court-selected map would

“effectively usurp the role and function of the law-making bodies of this Commonwealth.” Exhibit 9 at p. 206 (¶ 49).

38. Judge McCollough also found that HB 2146 would result in “9 Democratic-leaning seats and 8 Republican-leaning seats,” despite the fact that the Republican majority in the General Assembly had developed and proposed that plan. *See* Exhibit 9 at p. 211 (¶¶ 78–79); *id.* at 211 at ¶ 79 (“Unlike other maps that leaned Democrat, here, it is the Republican majority in the General Assembly that developed and proposed a plan, HB 2146, that favors Democrats, which ultimately underscores the partisan fairness of the plan.”).

39. The Supreme Court of Pennsylvania allowed any party or intervenor to file exceptions to Judge McCullough’s findings and recommendations by February 14, 2022, and the state supreme court scheduled oral argument for February 18, 2022.

40. On February 9, 2022, the Supreme Court of Pennsylvania issued an order sua sponte that purports to “suspend” the General Primary Election calendar codified in 25 Pa. Stat. §§ 2868 and 2873. *See* Exhibit 10. No litigant had asked the state supreme court to suspend the primary-election calendar or issue an order purporting to do so.

41. On February 23, 2022, the Supreme Court of Pennsylvania entered an order that purports to “adopt” the Carter Plan for the 2022 elections. *See* Exhibit 11. Three justices dissented from the decision to adopt the Carter plan. *See id.*

42. 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.” Exhibit 11.

43. The state supreme court also “modified” the statutory deadlines in General Primary Election calendar to accommodate its decision to impose the Carter Plan 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.” Exhibit 11.

44. The defendants intend to implement the Carter Plan for the 2022 congressional elections, in defiance of the Elections Clause, 2 U.S.C. § 2a(c)(5), and the equal-population rule of *Wesberry v. Sanders*, 376 U.S. 1 (1964).

PENNSYLVANIA’S ELECTION LAWS

45. A candidate who wishes to appear on the primary ballot in Pennsylvania must file a nomination petition signed by members of his party who are registered voters. *See* 25 Pa. Stat. §§ 2867.

46. Candidates for the U.S. House of Representatives in Pennsylvania must obtain 1,000 signatures from registered voters in the Commonwealth at large. *See* 25 Pa. Stat. §§ 2872.1(12).

47. The statutes governing Pennsylvania elections provide that the first day that candidates may begin circulating nominating petitions is February 15, 2022. The final day to obtain signatures is March 8, 2022.

48. The state supreme court's order of February 9, 2022, purported to "suspend" the General Primary Election calendar, so that candidates were unable to begin circulating nominating petitions on February 15, 2022.

49. The state supreme court's order of February 23, 2022, purports to modify these statutory deadlines by declaring that the first day to circulate and file nomination petitions shall be February 25, 2022, rather than February 15, 2022, and that the last day to circulate and file nomination petitions shall be March 15, 2022, rather than March 8, 2022. *See* Exhibit 11 at p. 3.

50. The statutes governing Pennsylvania elections require the state's primary elections to be held on May 17, 2022.

51. The state supreme court's order of February 23, 2022, does not attempt to change the date of the state's primary election, even though it attempts to alter the deadlines for circulating and filing nominating petitions.

FACTS RELATED TO STANDING

52. Each of the six plaintiffs is a registered voter in Pennsylvania, and each of them is suffering injury in fact from the defendants' implementation of the unconstitutional Carter Plan and their refusal to hold at-large elections for the state's congressional delegation, as required by the Elections Clause and 2 U.S.C. § 2a(c)(5).

53. Under 2 U.S.C. § 2a(c), the plaintiffs are entitled to cast ballots for all 17 of the state's representatives in the U.S. House if the General Assembly fails to enact a new congressional map in time for the 2022 elections. The defendants are depriving each of the plaintiffs of their entitlement to vote in all 17 congressional races by refusing to hold at-large elections as required by 2 U.S.C. § 2a(c)(5). This injury is traceable to the allegedly unlawful conduct of the named defendants, who are violating the Elections Clause and 2 U.S.C. § 2a(c)(5) by implementing the Carter Plan for the 2022 congressional elections. And it will be redressed by an injunction that halts the implementation of the Carter plan and requires the defendants to conduct at-large elections for Pennsylvania's congressional delegation unless and until the General Assembly enacts a new congressional map.

54. Plaintiff Gartland is suffering additional injury in fact from the Carter Plan's violation of the equal-population rule. Plaintiff Gartland resides and will vote in the Carter Plan's 5th congressional district, and his vote will carry less weight because the population of his district has been overweighted in violation of the Constitution's equal-population rule. *See* Exhibit 5, p. 21; Gartland Decl. (attached as Exhibit 14). This injury is traceable to the allegedly unlawful conduct of the named defendants, who are violating *Wesberry v. Sanders* by implementing the Carter Plan for the 2022 congressional elections. And it will be redressed by an injunction that halts the implementation of the Carter Plan and requires the defendants to conduct at-large elections for Pennsylvania's

congressional delegation unless and until the General Assembly enacts a new congressional map.

55. Plaintiff Bashir is suffering additional injury in fact because the Carter plan is forcing him to run in a congressional district with a massive Democratic voter-registration advantage, rather than in a statewide at-large election where the number of Democratic and Republican voters are more evenly split. *See* Bashir Decl. ¶ 4 (attached as Exhibit 10). This injury is traceable to the allegedly unlawful conduct of the named defendants, who are violating the Elections Clause and 2 U.S.C. § 2a(c)(5) by implementing the Carter Plan for the 2022 congressional elections. And it will be redressed by an injunction that halts the implementation of the Carter plan and requires the defendants to conduct at-large elections for Pennsylvania's congressional delegation unless and until the General Assembly enacts a new congressional map.

56. Plaintiffs Bognet and Bashir are suffering additional injuries in fact because the defendants' implementation of the unconstitutional Carter Plan and their refusal to honor the Elections Clause and 2 U.S.C. § 2a(c)(5) is leaving plaintiffs Bognet and Bashir uncertain of how they should campaign for a seat in the U.S. House of Representatives. The primary election is only three months away, and the defendants' implementation of a patently unconstitutional congressional map creates a substantial risk that a federal court or the Supreme Court of the United States will declare the map unlawful after they have spent time and resources campaigning in the court-drawn congressional

districts. *See* Bashir Decl. ¶ 5 (attached as Exhibit 12). This cloud of legal uncertainty over the court-drawn map inflicts additional injury in fact by making it difficult for Mr. Bashir and Mr. Bognet to raise money from donors to finance their campaigns. *See* Bashir Decl. ¶ 6–8 (attached as Exhibit 10). This injury is traceable to the allegedly unlawful conduct of the named defendants, who are violating the Elections Clause and 2 U.S.C. § 2a(c)(5) by implementing the Carter Plan for the 2022 congressional elections. And it will be redressed by an injunction that halts the implementation of the Carter plan and requires the defendants to conduct at-large elections for Pennsylvania’s congressional delegation unless and until the General Assembly enacts a new congressional map.

57. Plaintiff Alan M. Hall is suffering additional injuries in fact in his capacity as a member of the Susquehanna County Board of Elections. The defendants’ implementation of the Carter Plan will force Mr. Hall to conduct an election under an unconstitutional map, in contravention of Mr. Hall’s oath of office. In addition, the state supreme court’s unilateral “revisions” to the statutorily mandated primary election calendar will force Mr. Hall to depart from the General Primary Calendar that the legislature enacted, in violation of the U.S. Constitution and in contravention of Mr. Hall’s oath to obey the Constitution. These injuries are traceable to the allegedly unlawful conduct of the named defendants, who are violating the Elections Clause and 2 U.S.C. § 2a(c)(5) by implementing the Carter Plan for the 2022 congressional elections. And it will be redressed by an injunction that halts the implementation

of the Carter plan and requires the defendants to conduct at-large elections for Pennsylvania's congressional delegation unless and until the General Assembly enacts a new congressional map.

58. Plaintiff Hall is also suffering injury in fact from the defendants' decision to implement the "revised" General Primary Calendar decreed by the state supreme court. Because the state supreme court extended the deadline for circulating and filing nomination petitions by seven days, Mr. Hall does not expect to have a certified list of candidates until March 29, 2022—seven days later than would be expected under the calendar prescribed by the Legislature. *See* Hall Decl. ¶ 7 (attached as Exhibit 12). Yet under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), Mr. Hall's office must send ballots to overseas military members at least 45 days before the primary election. *See* 52 U.S.C. § 20302(a)(8)(A). That deadline falls on April 2, 2022, a Saturday. So the defendants' departure from the legislatively enacted calendar leaves Mr. Hall and his colleagues with only one or two days to prepare and mail overseas military absentee ballots given the deadline established in UOCAVA. *See* Hall Decl. ¶ 8 (attached as Exhibit 12). This injury is traceable to the allegedly unlawful conduct of the named defendants, who are violating the Elections Clause by departing from the General Primary Calendar that the Pennsylvania legislature enacted. And it will be redressed by an injunction that enjoins the defendants from departing from the General Primary Calendar.

**CLAIM #1: THE DEFENDANTS' IMPLEMENTATION OF
THE CARTER PLAN VIOLATES THE ELECTIONS CLAUSE
AND 2 U.S.C. § 2a(c)(5)**

59. The Elections Clause provides:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const. art. 1, § 4, cl. 1 (emphasis added).

60. The Elections Clause forbids the defendants to implement the Carter Plan because it has not been “prescribed” by “the Legislature” of Pennsylvania. The Supreme Court of Pennsylvania is not part of “the Legislature,” and the General Assembly has not delegated any of its map-drawing powers to the state judiciary or authorized the state courts to involve themselves in the redistricting process in any way.

61. The Elections Clause also forbids the defendants to defy the requirements of 2 U.S.C. § 2a(c)(5), which requires Pennsylvania to hold at-large elections if the General Assembly fails to enact a new congressional map in time for the 2022 primary. *See* U.S. Const. art. 1, § 4, cl. 1 (allowing Congress to “make or alter” regulations for electing representatives). The Supreme Court of Pennsylvania is constitutionally forbidden to replace the fallback regime that Congress has established in 2 U.S.C. § 2a(c)(5) with a court-drawn

map—and the state’s election officials are constitutionally obligated to implement 2 U.S.C. § 2a(c)(5) over any contrary command that might emanate from the state judiciary.

62. The Court should therefore declare the Carter Plan unconstitutional and enjoin the defendants from enforcing or implementing it. The Court should also enter an injunction that requires the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map.

63. The plaintiffs bring these claims under 42 U.S.C. § 1983, the Declaratory Judgment Act, and any implied rights of action that might exist under the Constitution of the United States or any election-related statute enacted by Congress.

**CLAIM #2: THE DEFENDANTS’ DEPARTURE FROM THE
GENERAL PRIMARY CALENDAR VIOLATES THE
ELECTIONS CLAUSE**

64. The Elections Clause provides:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const. art. 1, § 4, cl. 1 (emphasis added).

65. The Elections Clause forbids the defendants to depart from the General Primary Calendar that has been “prescribed” by “the Legislature” of Pennsylvania to govern the state’s congressional and senatorial elections.

66. The Court should declare that the defendants must adhere to the General Primary Calendar when conducting elections for the U.S. House and Senate, and it should enjoin the defendants from departing from that legislatively enacted primary calendar unless and until that calendar is modified or altered by the Pennsylvania legislature.

67. The plaintiffs bring these claims under 42 U.S.C. § 1983, the Declaratory Judgment Act, and any implied rights of action that might exist under the Constitution of the United States or any election-related statute enacted by Congress.

CLAIM #3: THE CARTER PLAN VIOLATES THE EQUAL-POPOULATION RULE OF WESBERRY V. SANDERS

68. The Constitution requires states to establish congressional districts of equal population. *See Wesberry v. Sanders*, 376 U.S. 1 (1964). This equal-population rule compels states to “draw congressional districts with populations as close to perfect equality as possible.” *Evenwel v. Abbott*, 578 U.S. 54, 59 (2016).

69. The Carter Plan, however, produces congressional districts with a two-person deviation, even though 11 of the 13 plans that were proposed to the state supreme court had population deviations of no more than one person. *See* Exhibit 9 at p. 192 (¶ 18) (“[U]nlike the other plans that have a maximum population deviation of one person, the Carter Plan and the House Democratic Plan both result in districts that have a two-person deviation.”).

70. A two-person population deviation is constitutionally impermissible when it is possible to draw congressional districts with exactly equal populations or with population deviations of no more than one. *See Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969); *Karcher v. Daggett*, 462 U.S. 725, 730–31 (1983); *Evenwel*, 578 U.S. at 59 (“States must draw congressional districts with populations as close to perfect equality as possible.”).

71. The special master appointed by the Supreme Court of Pennsylvania rejected the Carter Plan for precisely this reason. *See* Exhibit 9 at 195 (¶ 34) (describing the Carter Plan as “contrary to . . . United States Supreme Court precedent.”); *id.* at 204 (“[T]his Court does not recommend adopting the Carter Plan for the congressional districts in the Commonwealth of Pennsylvania because . . . it has a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one person deviation”).

72. The Supreme Court of Pennsylvania, however, overruled the special master and “adopted” the Carter Plan despite its incompatibility with the equal-population rule—and despite the fact that the other competing maps complied with the Supreme Court’s equal-population edicts by ensuring a population deviation of no more than one person.

73. The Court should declare the Carter Plan unconstitutional because it violates the equal-population rule of *Wesberry v. Sanders*, and it should enjoin the defendants from implementing or enforcing the Carter Plan.

74. The plaintiffs bring these claims under 42 U.S.C. § 1983, the Declaratory Judgment Act, and any implied rights of action that might exist under the Constitution of the United States or any election-related statute enacted by Congress.

DEMAND FOR RELIEF

75. The plaintiffs respectfully request that the court:

- a. declare that the Carter Plan violates the Elections Clause and 2 U.S.C. § 2a(c)(5);
- b. declare that the Elections Clause compels the defendants to adhere to the General Primary Calendar enacted by the Pennsylvania legislature when conducting elections for the U.S. House and Senate;
- c. declare that the Carter Plan violates the equal-population rule of *Wesberry v. Sanders*;
- d. declare that the Elections Clause and 2 U.S.C. § 2a(c)(5) require the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map;
- e. enter a preliminary and permanent injunction that: (1) restrains the defendants from implementing or enforcing the Carter Plan; (2) restrains the defendants from departing from the General Primary Calendar enacted by the Pennsylvania legislature when conducting elections for the U.S. House and Senate; and

- (3) compels the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map;
- f. award the plaintiffs costs and attorneys' fees under 42 U.S.C. § 1988;
- g. grant all other relief that the Court may deem just, proper, or equitable.

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 26, 2022

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on February 26, 2022, I filed this document on CM/ECF, which will effectuate service upon the following counsel of record:

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
rwiygul@hangley.com
crice@hangley.com
jhill@hangley.com

JOSHUA A. MATZ
Kaplan, Hecker & Fink
1050 K Street NW, Suite 1040
Washington, DC 20001
(929) 294-2537
jmatz@kaplanhecker.com

Counsel for Defendants

ABHA KHANNA
LALITHA D. MADDURI
JYOTI JASRASARIA
TINA Y. MENG
Elias Law Group LLP
1700 Seventh Ave., Suite 2100
Seattle, Washington 98101
(206) 656-0177
akhanna@elias.law
lmadduri@elias.law
jjasrasaria@elias.law
tmeng@elias.law

ELIZABETH WINGFIELD
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103
(215) 665-8500 (phone)
(215) 864-8999 (fax)
wingfelde@ballardspahr.com

Counsel for Proposed Intervenors

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

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter, <i>et al.</i> , Petitioners	:	CASES CONSOLIDATED
	:	
v.	:	No. 464 M.D. 2021
	:	
Leigh Chapman, <i>et al.</i> , Respondents	:	
	:	
	:	
Philip T. Gressman, <i>et al.</i> , Petitioners	:	
	:	
v.	:	No. 465 M.D. 2021
	:	
Leigh Chapman, <i>et al.</i> , Respondents	:	
	:	
	:	

**CARTER PETITIONERS' BRIEF IN SUPPORT OF PROPOSED
CONGRESSIONAL REDISTRICTING PLAN**

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	2
THE CARTER PLAN	4
REDISTRICTING PRINCIPLES	5
I. Least-Change Approach.....	5
II. Traditional Redistricting Criteria Announced in <i>LWV</i>	6
a. Equal Population.....	6
b. Compactness	7
c. Contiguity.....	9
d. Integrity of Political Subdivisions.....	9
III. Other Redistricting Principles	10
a. Minority Voting Rights.....	10
b. Communities of Interest.....	11
c. Partisan Fairness.....	13
CONCLUSION	14

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ala. Legis. Black Caucus v. Alabama</i> , 575 U.S. 254 (2015).....	11
<i>Brown v. Thomson</i> , 462 U.S. 835 (1983).....	7
<i>Carter v. Degraffenreid</i> , Nos. 464 MD 2021, 465 MD 2021 (Pa. Commw. Ct. Jan. 14, 2022)	2
<i>Colleton Cty. Council v. McConnell</i> , 201 F. Supp. 2d 618 (D.S.C. 2002)	7
<i>Hippert v. Ritchie</i> , No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012)	5
<i>Johnson v. WEC</i> , No. 2021AP1450-OA	5
<i>Karcher v. Daggett</i> , 462 U.S. 725 (1983).....	6, 9
<i>Kirkpatrick v. Preisler</i> , 394 U.S. 526 (1969).....	7
<i>LaComb v. Growe</i> , 541 F. Supp. 154 (D. Minn. 1982).....	5
<i>League of Women Voters of Pa. v. Commonwealth</i> , 645 Pa. 576 (2018) (<i>LWV II</i>)	<i>passim</i>
<i>League of Women Voters of Pa v. Commonwealth</i> No. 159 MM 2017 (M.D. Pa. 2018)	3
<i>League of Women Voters v. Commonwealth</i> , 645 Pa. 1 (2018).....	8, 9
<i>League of Women Voters v. Commonwealth (LWV I)</i> , 178 A.3d 737 (Pa. 2018).....	3

<i>Mellow v. Mitchell</i> , 530 Pa. 44, 50 (1992).....	7, 10, 11, 13
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995).....	7, 9
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	6, 9
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	7
Statutes	
52 U.S.C. § 10301(a)	11
Voting Rights Act of 1965, 52 U.S.C. § 10301(b) (2018)	10
Other Authorities	
U.S. Const. amend. XIV	11
U.S. Const. amend. XV.....	11

Pursuant to this Court’s January 14, 2022 scheduling order, the *Carter* Petitioners hereby submit this brief in support of their 2022 Pennsylvania Congressional Redistricting Plan (the “Carter Plan”).¹

INTRODUCTION

Four years ago, in *League of Women Voters of Pa. v. Commonwealth*, 645 Pa. 576 (2018) (*LWV II*), the Pennsylvania Supreme Court struck down the 2011 congressional map as a partisan gerrymander and adopted a remedial congressional map that reflected the physical and political geography of the Commonwealth (the “2018 Remedial Plan”). The Carter Plan builds on the court-approved 2018 Remedial Plan, preserving the cores and lines of current districts to the greatest extent possible, while accounting for changes in the Commonwealth’s population over the past decade. The Carter Plan meets or surpasses the 2018 Remedial Plan’s performance on the state’s traditional redistricting criteria while also reflecting the partisan preferences of Pennsylvania voters.

Although metropolitan areas in Pennsylvania experienced population growth at the same rate as the United States as a whole, substantial population decline in rural Pennsylvania entitles Pennsylvania to one fewer congressional district for the next decade. As a result, the *Carter* Petitioners’ proposed districts in Southeastern

¹ The Carter Plan was drawn using 2020 Census redistricting data. The population of each of its districts remains the same whether one uses the 2020 Census redistricting data set or the Legislative Reapportionment Commission’s Data Set #1.

Pennsylvania and the Pittsburgh area change very little from the 2018 Remedial Plan, whereas the loss of a rural district necessitates more changes in the geographic size and configuration of districts in the rest of the state to preserve population equality. Nevertheless, even where district boundary changes were necessary to equalize population, the Carter Plan adjusts those boundaries in ways that matched or improved the 2018 map's compliance with the traditional, objective redistricting criteria that the Pennsylvania Supreme Court set forth in *LWV I*: compactness, contiguity, equality of population, and respect for the integrity of political subdivisions.

For these reasons, explained in more detail below, the *Carter* Petitioners respectfully ask this Court to adopt the Carter Plan in full.

BACKGROUND

On January 14, 2022, this Court issued an order requesting that all parties in the case submit “at least one (1) but no more than two (2) proposed 17-district congressional redistricting plan(s) that are consistent with the results of the 2020 Census and, if the party chooses to do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on Monday, January 24, 2022.” Order, *Carter v. Degraffenreid*, Nos. 464 MD 2021, 465 MD 2021 (Pa. Commw. Ct. Jan. 14, 2022).

The Pennsylvania Supreme Court adopted the 2018 Remedial Plan after it invalidated the 2011 plan as a violation of the “Free and Equal” Elections Clause of

the Pennsylvania Constitution. *LWV II*, 645 Pa. 576. During the remedial stage of that litigation, the Pennsylvania Supreme Court identified several “neutral criteria” to assess congressional redistricting plans: (1) population equality; (2) compactness; (3) contiguity; and (4) respect for political subdivisions. *League of Women Voters v. Commonwealth (LWV I)*, 178 A.3d 737, 816–17 (Pa. 2018). The goal was to create “representational districts that both maintain the geographical and social cohesion of the communities in which people live and conduct the majority of their day-to-day affairs, and accord equal weight to the votes of residents in each of the various districts.” *Id.* at 814, 816. In ultimately adopting the 2018 Remedial Plan, the Pennsylvania Supreme Court emphasized that the 2018 Remedial Plan was “superior or comparable” to the other plans before the Court based on the relevant neutral criteria it had identified previously. Opinion and Order Adopting Remedial Plan at 7, *League of Women Voters of Pa. v. Commonwealth*, No. 159 MM 2017 (M.D. Pa. 2018).

Pennsylvania’s 2018 congressional redistricting litigation thus provides recent guidance both on the drawing of a proposed congressional plan and the criteria by which it should be evaluated. The 2018 Remedial Plan was drawn using last decade’s population counts, however. 2020 Census data shows that Pennsylvania is now entitled to one fewer seat due to its slow population growth as compared to the rest of the United States. The challenge for a map drawer, therefore, is drawing a

plan that adheres to the guidance set forth in *LWV I* while grappling with Pennsylvania's population loss. The Carter Plan achieves these goals.

Pursuant to this Court's instructions, the *Carter* Petitioners submit one proposed 17-district map using the 2020 Census redistricting data set, the accompanying expert report of Dr. Jonathan Rodden, and this brief.

THE CARTER PLAN

The Carter Plan is appended to this brief as Exhibit 2. As described below, *see infra* Section I, it implements a least-change approach. Using the 2018 Remedial Map as a starting point, it preserves district cores, creates continuity in representation, and respects communities of interest. It also satisfies the traditional redistricting criteria announced in *LWV I* and other redistricting principles that the Pennsylvania Supreme Court has relied upon in the past.

At the same time, the Carter Plan accounts for the significant changes in Pennsylvania's population between 2011 and 2021. Pennsylvania's population change was not uniform statewide. Rural regions of the state lost population. But urban areas grew—some, significantly. In particular, Chester, Lehigh, and Montgomery Counties in the southeast, as well as Dauphin County in Central Pennsylvania, all grew by over 8 percent. *See* Ex. 1, Rodden Expert Report (hereinafter Ex. 1) at 7. And Allegheny County, encompassing Pittsburgh, grew by 2.2%. *Id.* By contrast, rural counties, like Fayette, lost population. *Id.*

Pennsylvania lost a congressional district because its population did not grow as much as other states'. This slower growth is attributable largely to population decline outside of Pennsylvania's metropolitan areas. *Id.* at 7. Consequently, although the districts in metropolitan areas need only be fine-tuned based on local variation in the rate of population growth, more significant changes to existing districts in rural Pennsylvania are unavoidable. *Id.* at 9. The Carter Plan makes these adjustments in a manner that aligns with the redistricting principles outlined below.

REDISTRICTING PRINCIPLES

I. Least-Change Approach

Because the Pennsylvania Supreme Court adopted a congressional districting plan that it found to be “superior or comparable” to any plan submitted by parties and amici in the *LWV* case just four years ago, the *Carter* Petitioners took a “least-change” approach to drawing their proposed map. As such, they used the 2018 Remedial Plan as a starting point, a common strategy courts deploy when, as here, the existing map is rendered obsolete by population changes. *LaComb v. Growe*, 541 F. Supp. 154, 151 (D. Minn. 1982) (stating that the “starting point” for new, court-drawn congressional districts is the last configuration of districts); *see also* Order, *Johnson v. WEC*, No. 2021AP1450-OA, ¶ 81 (plurality op.), ¶ 87 (Hagedorn, J., concurring) (Wis. Nov. 30, 2021) (holding that judicially adopted plans should attempt to minimize changes from the previous map); Order, *Hippert v. Ritchie*, 813

N.W. 2d 374, 380 (Minn. 2012), No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (explaining that the judicial redistricting panel “utilizes a least-change strategy where feasible”).

By taking this approach, the *Carter* Petitioners were able to preserve the core of the 2018 Remedial Plan’s districts and create continuity for the overwhelming majority of Pennsylvania residents. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (recognizing that preserving district cores is a traditional principle of redistricting); *Reynolds v. Sims*, 377 U.S. 533, 578-79 (1964) (same). Under the Carter Plan, 87 percent of Pennsylvania’s population would remain in their 2018 Remedial Plan district. *See* Ex. 1 at 20. Moreover, the Carter Plan’s least-change approach required no sacrifice of any of the traditional redistricting criteria outlined by the Pennsylvania Supreme Court; it meets or surpasses the 2018 Remedial Plan on population equality, compactness, contiguity, and political subdivision splits.

II. Traditional Redistricting Criteria Announced in *LWV*

The Carter Plan meets or surpasses the 2018 Remedial Plan on the *LWV I* court’s redistricting criteria while also reflecting the partisan preferences of Pennsylvania voters.

a. Equal Population

The Carter Plan satisfies the requirement for equal population. A congressional redistricting plan “should consist of congressional districts . . . as

nearly equal in population as practicable.” *LWV II*, 645 Pa. at 581. Under the “one person, one vote” principle, congressional districts within a state must have equally apportioned numbers of persons. *See Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964). For federal congressional districts, the United States Constitution “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality.” *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969); *see also Mellow v. Mitchell*, 530 Pa. 44, 51 (1992).

The Carter Plan satisfies this principle. The ideal population of the 17 congressional districts is 764,865. The Carter Plan includes 4 districts with the ideal population and 13 districts with a deviation of plus or minus one person. This level of population deviation readily satisfies constitutional requirements. *Colleton Cty. Council v. McConnell*, 201 F. Supp. 2d 618, 664 (D.S.C. 2002) (“In keeping with our overriding concern, the court plan complies with the ‘as nearly as practicable’ population equality requirement of Article 1, § 2 of the Constitution, with a deviation of plus or minus one person.” (citing *Karcher*, 462 U.S. at 730)).

b. Compactness

The Carter Plan is comparable in compactness to the 2018 Remedial Plan. Ex. 1 at 22-23.

A congressional redistricting plan “should consist of congressional districts composed of compact . . . territory.” *LWV II*, 645 Pa. at 581; *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995); *Brown v. Thomson*, 462 U.S. 835, 842 (1983).

The Carter Plan satisfies this principle. *See* Ex. 1 at 22-23. Consistent with the *LWV I* decision, the *Carter* Petitioners have reported the results of the Reock, Schwartzberg, Polsby-Popper, Population Polygon, and Area/Convex Hull measures of compactness for each district.² *See* Ex. 1 at 22, Table 5; *see also League of Women Voters v. Commonwealth*, 645 Pa. 1, 46-48 (2018) (calling the Reock and Polsby-Popper metrics “widely-accepted standards”). Overall, the Carter Plan’s Reock score matches the 2018 Remedial Plan’s score; its Schwartzberg score is better than the 2018 Remedial Plan’s score; and it falls just shy of matching (each by 0.01) the 2018 Remedial Plan’s scores on the remaining measures. The Carter Plan’s slight decrease along some compactness measures results from the effort to maintain population

² The Reock test compares each district to an ideal circle and computes the ratio of the area of the district to the minimum area of a circle sufficiently large to encompass the district. The Schwartzberg test is similar, taking the ratio of the perimeter of a district to the circumference of a circle whose area is equal to the area of the district. The Polsby-Popper test compares the ratio of a district’s area with the area of a circle sharing the same perimeter. The Population Polygon test computes the ratio of a district’s population to the population of the minimum convex polygon that completely contains the district. And the Area/Convex Hull test measures the ratio of a district’s area to the area of the minimum convex shape that completely contains the district. The numerical result of each test falls between zero and one, with one being the most compact.

equality in Districts 4 and 5. Population deviations in the counties comprising these districts—specifically Bucks and Delaware Counties—required the Carter Plan to reach outside of those subdivisions for additional population.³

c. Contiguity

The Carter Plan’s districts are contiguous. A congressional redistricting plan “should consist of congressional districts composed of . . . contiguous territory.” *LWV II*, 645 Pa. at 581; *see also Miller*, 515 U.S. at 916. Each of the Carter Plan’s 17 districts is contiguous and includes none of the “isthmuses” or “tentacles” that concerned the Supreme Court in *League of Women Voters of Pa. v. Commonwealth*. *LWV I*, 645 Pa. at 126.

d. Integrity of Political Subdivisions

Finally, the Carter Plan maintains and builds upon the 2018 Remedial Plan’s respect for the integrity of political subdivisions. A congressional redistricting plan “should consist of congressional districts . . . which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure

³ In particular, Dr. Rodden explains that in drawing the Carter Plan, he had to make a choice between drawing less compact districts centered on Bucks and Delaware Counties by including population tracts in neighboring Montgomery County or disrupting the 2018 Remedial Plan’s careful efforts not to split Chester, Lancaster, Lehigh, and Northampton Counties. *See Ex. 1* at 8. Ultimately, the Carter Plan does the former.

equality of population.” *LWV II*, 645 Pa. at 581; *see also Karcher*, 462 U.S. at 740–41; *Reynolds*, 377 U.S. at 580–81.

The Carter Plan satisfies this principle. *See* Ex. 1 at 21. In comparison to the 2018 Remedial Plan, which the Pennsylvania Supreme Court chose in part because it performed well on this score, the Carter Plan has the same or fewer county, county subdivision, and vote tabulation district splits. *Id.*

III. Other Redistricting Principles

The Carter Plan also embodies other redistricting principles considered by the Pennsylvania Supreme Court. It preserves minority voting rights, maintains communities of interest, and reflects Pennsylvanians’ partisan preferences.

a. Minority Voting Rights

The Carter Plan maintains the protection for minority voting rights reflected in the 2018 Remedial Plan. In *Mellow v. Mitchell*, the Pennsylvania Supreme Court adopted the Commonwealth Court’s recommendation to approve a congressional redistricting plan in part because that plan achieved greater minority representation. *Mellow v. Mitchell*, 530 Pa. 44, 50 (1992). Likewise, under federal law, districts must be drawn to protect the equal opportunity of racial, ethnic, and language minorities to participate in the political process and elect candidates of their choice, whether alone or in alliance with others. Voting Rights Act of 1965, 52 U.S.C. § 10301(b) (2018). And districts must not be drawn with either the purpose or effect of

denying or abridging the voting rights of any United States citizen on account of race, ethnicity, or membership in a language minority group. U.S. Const. amends. XIV, XV; 52 U.S.C. § 10301(a).

The Carter Plan satisfies this principle. It closely follows the boundaries of the 2018 Remedial Plan with regard to those areas of the state with sizeable minority populations, thus preserving the minority opportunity districts that the Pennsylvania Supreme Court approved in 2018. Moreover, Dr. Rodden did not take racial data into account when making adjustments for population changes. *See* Ex. 1 at 23.

b. Communities of Interest

The *Mellow* Court adopted a congressional redistricting plan that implemented “community-of-interest factors in those regions of the State which have identified them.” *Mellow*, 530 Pa. at 50; *see also Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015) (describing respect for “communities defined by actual shared interests” as a traditional redistricting principle (quotation omitted)). Likewise, the Governor’s Pennsylvania Redistricting Advisory Council adopted “communities of interest” as one of its redistricting principles, defining the term as “contiguous geographic areas or neighborhoods in which residents share common socio-economic and cultural interests which the residents of the region may seek to translate into effective representation. Examples of shared interests include those common to rural, urban, industrial or agricultural areas, where residents have

similar work opportunities, share similar standards of living, use the same transportation facilities, or share common environmental, healthcare, or educational concerns, among others.” Advisory Council Redistricting Principles, available at <https://www.governor.pa.gov/wp-content/uploads/2021/11/Redistricting-Advisory-Council-Final-Principles.pdf>.

The Carter Plan satisfies this principle. In applying a least-change approach and focusing on the Pennsylvania Supreme Court’s traditional redistricting criteria, the Carter Plan creates districts that represent natural and well-defined communities of interest. As described above, the current districts were crafted by a Court-appointed advisor who considered a lengthy Commonwealth Court record and many submissions by parties and amici. For those changes that the Carter Plan does make, it follows natural and political subdivision boundaries with a focus on keeping communities together. For example, when District 7 required additional population, Dr. Rodden added Carbon County to unify the Allentown-Bethlehem-Easton metropolitan statistical area consisting of the entirety of Northampton, Lehigh, and Carbon Counties. Ex. 1 at 13-14, Figure 6. Likewise, the new District 15, which had to change significantly due to population changes and the loss of what is District 12 under the 2018 Remedial Plan, now avoids a split of Centre County that had previously separated State College from some of its suburbs. *Id.* at 18, Figure 10.

c. Partisan Fairness

Finally, the Carter Plan reflects the partisan preferences of Pennsylvania voters. In *Mellow*, the Pennsylvania Supreme Court cited partisan fairness—the fact that the map in question resulted in a “politically fair balance in the Pennsylvania delegation between Democrats and Republicans”—as an additional factor to support adoption of the Commonwealth Court’s recommendation. *Mellow*, 530 Pa. at 58. Similarly, the Pennsylvania Redistricting Advisory Council adopted both “partisan fairness” and “competitiveness and responsiveness” as favored principles. The Council defined “partisan fairness” as “requir[ing] that parties have the opportunity to translate their popular support into legislative representation with approximately equal efficiency such that the proportion of districts whose voters favor each political party should correlate to the statewide preferences of the voters.” It defined a “competitive district [as] one in which the electoral outcome is close enough that the district can change with shifting voter preferences” and a “responsive map [as] one with enough competitive districts to allow for changes in the composition of the delegation with changes in proportion of votes for the parties.” *Id.*

The Carter Plan satisfies these principles. Although Dr. Rodden did not consider partisan outcomes when drawing his map, he later analyzed the Carter Plan’s likely partisan performance. Ex. 1 at 23-25. He concluded that the Carter Plan’s partisan performance essentially matches that of the 2018 Remedial Plan, and

that it contains truly competitive districts. *Id.* Accordingly, the Carter Plan will be both reflective of and responsive to Pennsylvanians' statewide partisan preferences.

CONCLUSION

For the foregoing reasons, the *Carter* Petitioners respectfully request that this Court adopt their proposed congressional redistricting plan.

Respectfully submitted,

/s/ Edward D. Rogers

Counsel for the Carter Petitioners

Exhibit 1

EXPERT REPORT OF JONATHAN RODDEN, Ph.D.

***Carter v. Chapman*, 464 MD 2021, 465 MD 2021 (Pa. Commw. Ct.)
January 24, 2022**

In this report, I describe the Carter Plan, a proposed Pennsylvania congressional redistricting map that I was asked to create and which the *Carter* Petitioners are submitting for consideration pursuant to the Court’s January 14, 2022 Order.

Specifically, I was asked to use the existing court-drawn 18-district plan as a guide, and to draw a new 17-district plan that is as similar as possible to the existing plan, preserving the cores and boundaries of districts where feasible given equal population requirements, and meeting or surpassing its adherence to traditional redistricting criteria, including (1) minimizing splits of counties, municipalities, and vote tabulation districts and (2) drawing compact districts. Moreover, I was asked to be mindful of the residential addresses of congressional incumbents to avoid inadvertent pairings of incumbent legislators. Finally, after completing my map, I was asked to evaluate the districts’ partisan performance.

The most important constraint shaping this task was the demographic change experienced by Pennsylvania since the 2010 census. The metropolitan areas of the state have experienced population growth on par with the United States as a whole, while rural Pennsylvania has experienced a precipitous decline in population. As a result of rural population loss, Pennsylvania lost a congressional seat. Accordingly, it is possible to make relatively small changes to the districts in Southeastern Pennsylvania and the Pittsburgh area, but the geographic size and configuration of districts in the rest of the state, which is more rural, needed to change more substantially to preserve population equality.

This report explains those demographic constraints in greater detail, and then presents a proposed congressional map that maintains continuity with the 2018 plan and adheres to traditional redistricting criteria. Despite the challenges associated with the loss of a district, this map shows that it is possible to preserve a relatively similar level of compactness as the current map, split the same number of counties, and reduce the number of split municipalities and vote tabulation districts. Furthermore, the resulting map is likely to result in a seat share that is consistent with and responsive to Pennsylvania voters’ partisan preferences.

I. QUALIFICATIONS AND EXPERIENCE

I am currently a tenured Professor of Political Science at Stanford University and the founder and director of the Stanford Spatial Social Science Lab—a center for research and teaching with a focus on the analysis of geo-spatial data in the social sciences. I am engaged in a variety of research projects involving large, fine-grained geo-spatial data sets including ballots and election results at the level of polling places, individual records of registered voters, census data, and survey responses. I am also a senior fellow at the Stanford Institute for Economic Policy Research and the Hoover Institution. Prior to my employment at Stanford, I was the Ford Professor of Political Science at the Massachusetts Institute of Technology. I received my Ph.D. from Yale University and my B.A. from the University of Michigan, Ann Arbor, both in political science. A copy of my current C.V. is included as Exhibit A.

In my current academic work, I conduct research on the relationship between the patterns of political representation, geographic location of demographic and partisan groups, and the drawing of electoral districts. I have published papers using statistical methods to assess political geography, balloting, and representation in a variety of academic journals including *Statistics and Public Policy*, *Proceedings of the National Academy of Science*, *American Economic Review Papers and Proceedings*, the *Journal of Economic Perspectives*, the *Virginia Law Review*, the *American Journal of Political Science*, the *British Journal of Political Science*, the *Annual Review of Political Science*, and the *Journal of Politics*. One of these papers was selected by the American Political Science Association as the winner of the Michael Wallerstein Award for the best paper on political economy published in the last year, and another received an award from the American Political Science Association section on social networks. In 2021, I received a John Simon Guggenheim Memorial Foundation Fellowship, and received the Martha Derthick Award of the American Political Science Association for “the best book published at least ten years ago that has made a lasting contribution to the study of federalism and intergovernmental relations.”

I have recently written a series of papers, along with my co-authors, using automated redistricting algorithms to assess partisan gerrymandering. This work has been published in the *Quarterly Journal of Political Science*, *Election Law Journal*, and *Political Analysis*, and it has been featured in more popular publications like the *Wall Street Journal*, the *New York Times*, and *Boston Review*. I recently published a book, published by *Basic Books* in June of 2019, on the relationship between political districts, the residential geography of social groups, and their political representation in the United States and other countries that use winner-take-all electoral districts. The book was reviewed in *The New York Times*, *The New York Review of Books*, *Wall Street Journal*, *The Economist*, and *The Atlantic*, among others. This book included deep analysis of Pennsylvania’s political geography and redistricting.

I have expertise in the use of large data sets and geographic information systems (GIS), and conduct research and teaching in the area of applied statistics related to elections. My PhD students frequently take academic and private sector jobs as statisticians and data scientists. I frequently work with geo-coded voter files and other large administrative data sets, including in recent paper published in the *Annals of Internal Medicine* and *The New England Journal of Medicine*. I have developed a national data set of geo-coded precinct-level election results that has been used extensively in policy-oriented research related to redistricting and representation.

I have been accepted and testified as an expert witness in six election law and redistricting cases: *Romo v. Detzner*, No. 2012-CA-000412 (Fla. Cir. Ct. 2012); *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, No. 4:2014-CV-02077 (E.D. Mo. 2014); *Lee v. Va. State Bd. of Elections*, No. 3:15-CV-00357 (E.D. Va. 2015); *Democratic Nat’l Committee et al. v. Hobbs et al.*, No. 16-1065-PHX-DLR (D. Ariz. 2016); *Bethune-Hill v. Virginia State Board of Elections*, No. 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2014); and *Jacobson et al. v. Lee*, No. 4:18-cv-00262 (N.D. Fla. 2018). Just earlier this month, the Ohio Supreme Court credited my expert analysis in *Bennett v. Ohio Redistricting Commission*, No. 2012-1198 (Ohio 2022), and *Adams v. DeWine*, No. 2012-1428 (Ohio 2022), two redistricting cases challenging state legislative and congressional maps. I also worked with a coalition of academics to file Amicus Briefs in the Supreme Court in *Gill v. Whitford*, No. 16-1161, and *Rucho v. Common Cause*, No. 18-422. Much of the testimony in these cases had to do with geography, electoral districts, voting, ballots, and

election administration. I am currently working as a consultant for the Maryland Redistricting Commission.

I am being compensated at the rate of \$550/hour for my work in this case. My compensation is not dependent upon my conclusions in any way.

II. DATA SOURCES

In order to assess statewide partisanship, I have collected statewide election results for selected elections from 2010 to 2020 from the Pennsylvania Department of State.¹ The specific elections and results are detailed in Table 1 below. As part of my analysis of the relationship between population change and partisanship, I also collected county-level results of those same elections from the Pennsylvania Department of State. In order to assess the partisanship of the existing Pennsylvania Congressional districts as well as the proposed Carter Plan, I also accessed precinct-level election results from the Pennsylvania Department of State for statewide elections from 2016 to 2020 that were matched to 2020 Pennsylvania vote tabulation districts by a team at Harvard University called the Algorithm-Assisted Redistricting Methodology Project.² I also used block-level 2020 population estimates produced by the United States Census Department for the purposes of legislative redistricting. Additionally, I accessed the boundaries of current legislative districts and counties, along with data on 2010 and 2020 population, from the National Historical GIS (nhgis.org). I also accessed a file containing addresses of incumbents that was provided to me by counsel.

III. PENNSYLVANIA'S CURRENT CONGRESSIONAL DISTRICTS

Pennsylvania's current congressional plan was adopted in 2018 by an order of the Pennsylvania Supreme Court in *League of Women Voters of Pa. v. Commonwealth*, 645 Pa. 576 (2018) (LWV). In explaining its reasons for selecting this map, the Pennsylvania Supreme Court cited the map's superiority, compared with other maps that had been submitted, with respect to the traditional redistricting criteria of compactness and minimization of splits of counties, municipalities, and smaller political subdivisions. Indeed, the map stands out relative to those of many other U.S. states in that its districts are relatively compact and respectful of county and municipal boundaries.

As demonstrated by the elections of 2018 and 2020, the map also produced a congressional delegation that came very close to accurately portraying the partisan preferences of Pennsylvania's voters. In recent years, Pennsylvania has been a competitive but Democratic-leaning state. Table 1 displays results of all statewide elections since the last round of decennial redistricting. The average vote share of Democratic candidates during this period was almost 53 percent. Democratic candidates were victorious in 13 of 17 statewide races.

¹ <https://www.electionreturns.pa.gov/ReportCenter/Reports>

² <https://alarm-redist.github.io/posts/2021-08-10-census-2020/>

Table 1: Pennsylvania Statewide Election Results, 2012-2020

	Democratic votes	Republican votes	Democratic vote share
2012 President	2,990,274	2,680,434	52.73%
2012 Senate	3,021,364	2,509,132	54.63%
2012 Attorney General	3,125,557	2,313,506	57.46%
2012 Auditor General	2,729,565	2,548,767	51.71%
2012 Treasurer	2,872,344	2,405,654	54.42%
2014 Governor	1,920,355	1,575,511	54.93%
2016 Presidential	2,926,441	2,970,733	49.62%
2016 U.S. Senate	2,865,012	2,951,702	49.25%
2016 Attorney General	3,057,010	2,891,325	51.39%
2016 Auditor General	2,958,818	2,667,318	52.59%
2016 Treasurer	2,991,404	2,610,811	53.40%
2018 U.S. Senate	2,792,437	2,134,848	56.67%
2018 Governor	2,895,652	2,039,882	58.67%
2020 Presidential	3,458,229	3,377,674	50.59%
2020 Attorney General	3,461,472	3,153,831	52.33%
2020 Auditor General	3,129,131	3,338,009	48.39%
2020 Treasurer	3,239,331	3,291,877	49.60%
2012-2020 Average			52.85%
2016-2020 Average			52.05%
2018-2020 Average			52.71%

Note: Democratic vote share is the Democratic share of the votes for the two major parties (Democrats and Republicans). The denominator does not include minor parties and write-in candidates.

Table 1 also provides vote share averages for more recent election cycles. From 2016 to 2020—the period for which I have accessed precinct-level election results that allow me to assess the likely partisanship of proposed new redistricting plans—the average Democratic vote share was around 52 percent. During the lifespan of the most recent redistricting plan, which was implemented in 2018, the average Democratic vote share was 52.7 percent.

Given this pattern of statewide election results, a congressional redistricting plan that produces a slight majority of Democratic members of Congress would be an accurate reflection of overall statewide partisanship. After the elections of 2018 and 2020, the Pennsylvania congressional delegation was split evenly between the two parties. In other words, the 2018 congressional plan was, if anything, slightly more favorable to the Republican Party—with 50 percent of the seats and a relatively stable statewide support base between 47 and 48 percent—than the overall statewide vote share.

However, it is important to note that several districts were quite competitive and could plausibly have been won by either party. The district-level results of the 2018 and 2020 elections are

presented on the left-hand side of Table 2 below, along with the average of the two. The districts are sorted from the most Republican to most Democratic, according to the average congressional vote share. Note that Districts 1 (Bucks County), 10 (metro Harrisburg), and 16 (Northwest PA) were very close in 2018—a relatively good year for Democrats—and Districts 7 (Lehigh Valley), 8 (Northeast PA), and 17 (suburban Pittsburgh) were quite close in 2020, which was a relatively good year for Republicans.

Table 2: Actual District-Level Results of 2018 and 2020 Elections and Statewide Election Results Disaggregated by Congressional District

District	Democratic Congressional vote share, 2018	Democratic Congressional vote share, 2020	Average Democratic Congressional vote share, 2018-2020	Average Democratic <i>Statewide</i> vote share, 2018-2020	Over (under) performance of Democratic Congressional candidate
13	29.51%	26.51%	28.01%	29.35%	-1.34%
15	32.16%	26.54%	29.35%	31.56%	-2.21%
12	33.96%	29.16%	31.56%	33.22%	-1.66%
9	40.25%	33.67%	36.96%	37.12%	-0.16%
14	42.09%	35.31%	38.70%	40.66%	-1.96%
11	41.02%	36.88%	38.95%	39.02%	-0.07%
16	47.83%	40.66%	44.25%	43.36%	0.89%
1	48.74%	43.44%	46.09%	53.62%	-7.53%
10	48.68%	46.69%	47.68%	48.74%	-1.06%
8	54.64%	51.78%	53.21%	50.94%	2.27%
7	55.17%	51.87%	53.52%	53.68%	-0.16%
17	56.26%	51.15%	53.70%	53.99%	-0.29%
6	58.88%	56.05%	57.47%	56.71%	0.76%
4	63.52%	59.53%	61.52%	62.41%	-0.88%
5	65.19%	64.70%	64.94%	65.40%	-0.46%
18	Uncontested	69.25%	69.25%	68.06%	1.18%
2	79.02%	72.54%	75.78%	73.54%	2.23%
3	93.38%	91.03%	92.21%	92.34%	-0.14%

Note: Democratic vote share is the Democratic share of the votes for the two major parties (Democrats and Republicans). The denominator does not include minor parties and write-in candidates.

It is useful to make a distinction between actual district-level congressional election results, which are affected by idiosyncratic aspects of candidates' popularity, including strategic decisions by high-quality challengers to avoid running against popular incumbents, and what might be characterized as the underlying partisanship of the district. To capture the latter, political scientists often use precinct-level results of *statewide* elections, where the same candidates are running in each district, and count up the votes within the boundaries of legislative districts. I have also undertaken this approach, using the 6 statewide elections listed in Table 1 for 2018 and 2020 and taking an average for each district. These calculations are presented in the fifth column of Table 2. In the final column, I have subtracted the average statewide Democratic vote share from the

average congressional vote share, which provides an indicator of the extent to which the Democratic congressional candidate outperforms his or her statewide co-partisans (positive numbers), or to which the Republican candidate outperforms his or her statewide co-partisans (negative numbers).

This exercise reveals that while statewide and congressional election results are highly correlated, there are some interesting and sometimes sizable differences between statewide and congressional races. Above all, note that if we focus only on *statewide* races, there are 10 districts with Democratic majorities rather than 9. District 1 has an average Democratic vote share of 53.6 percent, yet the Republican incumbent from the previous Bucks County district, Mike Fitzpatrick, received 51.3 percent of the vote in 2018 and a comfortable 56.6 percent in 2020.

In keeping with a narrow but consistent statewide Democratic majority, the previous plan had 10 of 18 districts where Democratic candidates received majorities in statewide races, though one of these, District 8 in Northeastern Pennsylvania, was very close to evenly divided (less than 51 percent Democratic). Additionally, one of the Republican-leaning districts, number 10 in the Harrisburg area, was also rather evenly divided (a little over 51 percent Republican). When it comes to actual congressional election results, several were quite competitive, and due to a popular Republican incumbent in District 1, the delegation ended up evenly divided between the parties.

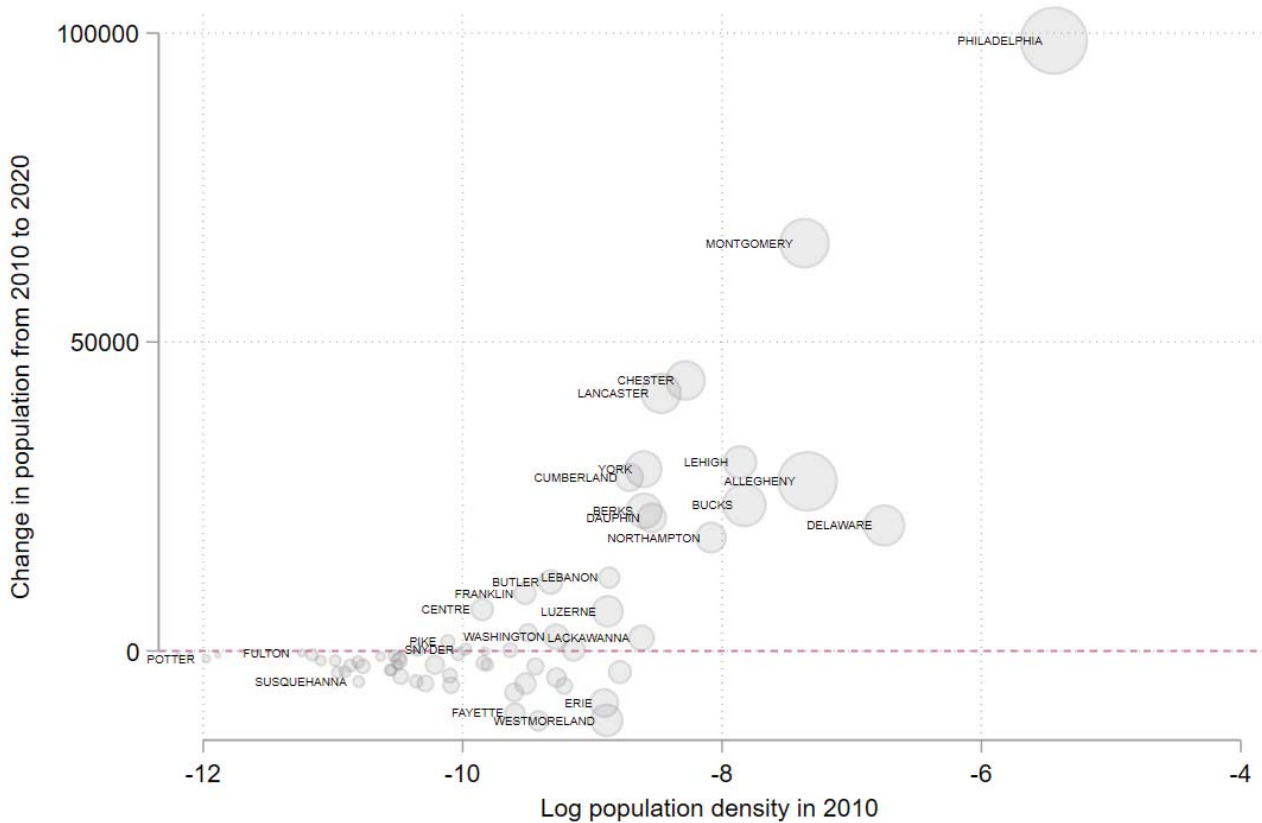
In sum, the existing plan demonstrates several desirable features. In addition to having relatively compact districts with few splits of counties and municipalities, it also produces relatively competitive elections, and outcomes that are roughly in line with overall partisan preferences of Pennsylvania's voters. Thus, it is a very reasonable starting point for the redistricting process in 2022.

IV. DEMOGRAPHIC CHANGE IN PENNSYLVANIA

To understand the constraints shaping a redistricting strategy based on the preservation of existing districts, it is necessary to understand the geography of Pennsylvania's population change over the last decade.

For the most part, places that were sparsely populated in 2010 subsequently lost population and became even sparser, while relatively dense places gained population and grew denser. This simple pattern can be visualized in Figure 1, which displays the log of 2010 population density on the horizontal axis, and the change in population from 2010 to 2020 on the vertical axis. Each data marker is a county, and the size of the data marker corresponds to the overall population of the county. The county that gained the most population, on the right side of the graph, was Philadelphia—the densest county in the state. Other counties experiencing relatively large increases in population were other relatively dense counties in the metro area surrounding Philadelphia County, e.g., Chester and Montgomery. With a few exceptions, e.g., Centre County and Butler County, Pennsylvania's relatively sparse counties lost population.

Figure 1: Population Density and Population Change in Pennsylvania, 2010 to 2020



In other words, metropolitan areas gained significant population, while rural areas experienced substantial population loss. In particular, the counties of Southeastern Pennsylvania experienced sustained population growth. In fact, from the decennial census of 2010 to that of 2020, these counties grew at an average rate of 6.7 percent.³ This is relatively close to the overall growth rate of the U.S. population during the same period, which was 7.3 percent. In fact, the rate of population growth in Chester, Lehigh, and Montgomery Counties surpassed 8 percent. Dauphin County, home to Harrisburg, grew at a rate of 8.1 percent, while Allegheny County, home to Pittsburgh, grew at a rate of 2.2 percent. Meanwhile, the rest of the state *lost* population at a rate of 2.7 percent since 2010.

These patterns can be visualized in Figure 2, which displays raw numbers of population gain and loss by county from 2010 to 2020, along with the boundaries of the current 18 congressional districts.

³ I include the counties of Bucks, Berks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, and Philadelphia.

Figure 2: The Geography of Population Shifts, Pennsylvania Counties, 2010 to 2020

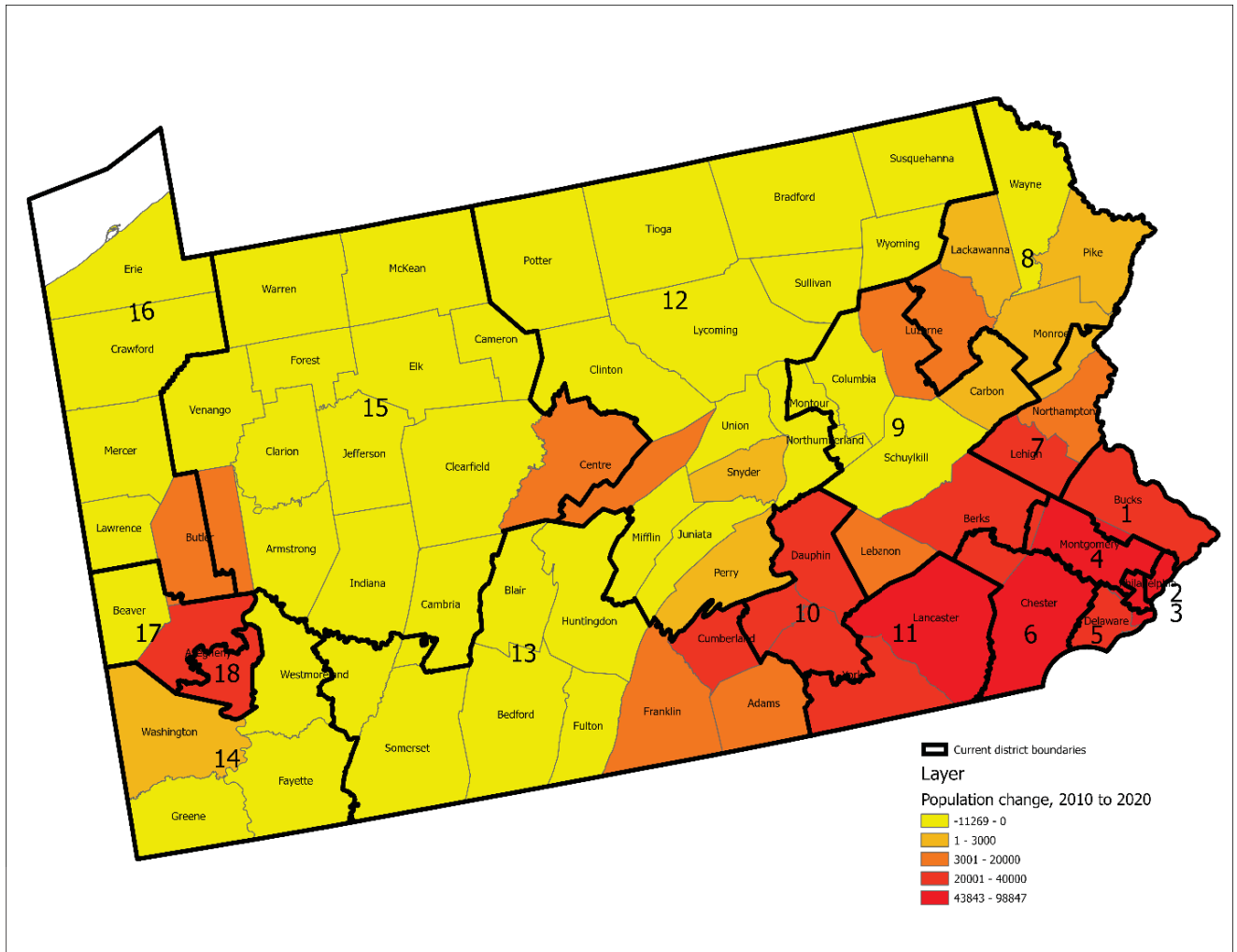


Figure 2 makes it clear that Pennsylvania lost a congressional district largely because of population decline outside of metropolitan areas. As a result, major reconfigurations of existing districts are unavoidable in rural Pennsylvania, whereas the districts in metropolitan areas can be fine-tuned based on local variation in the rate of population growth.

In the previous redistricting plan, which was very careful to avoid county splits, Philadelphia County was entirely contained within two congressional districts. Because population growth in Philadelphia was not far off from that of the average national rate, its districts need not change much at all. But because Bucks and Delaware counties experienced lower growth rates, Districts 1 and 5 must expand further beyond the confines of their counties. This is somewhat challenging, since the surrounding counties of Montgomery, Chester, and Lancaster have experienced rapid population growth. The expansions of Districts 1 and 5 must either dig further into Montgomery County, making its district (District 4) narrower and less compact, or completely disrupt the current map’s effort to avoid county splits in Chester, Lancaster, Lehigh, and Northampton. In the map presented below, I have elected to maintain the structure of the existing map and reach further into Montgomery County with Districts 1 and 5 (see below for more details).

Moving North from the Philadelphia metro area, moderate population growth in the counties contained in the current version of Districts 7 and 8 makes it possible to leave the basic structure of these districts intact. Likewise, moving West from Philadelphia, District 11 (based in Lancaster County) and District 10 (based in the Harrisburg area) require relatively minor changes due to population growth that is close to the national average.

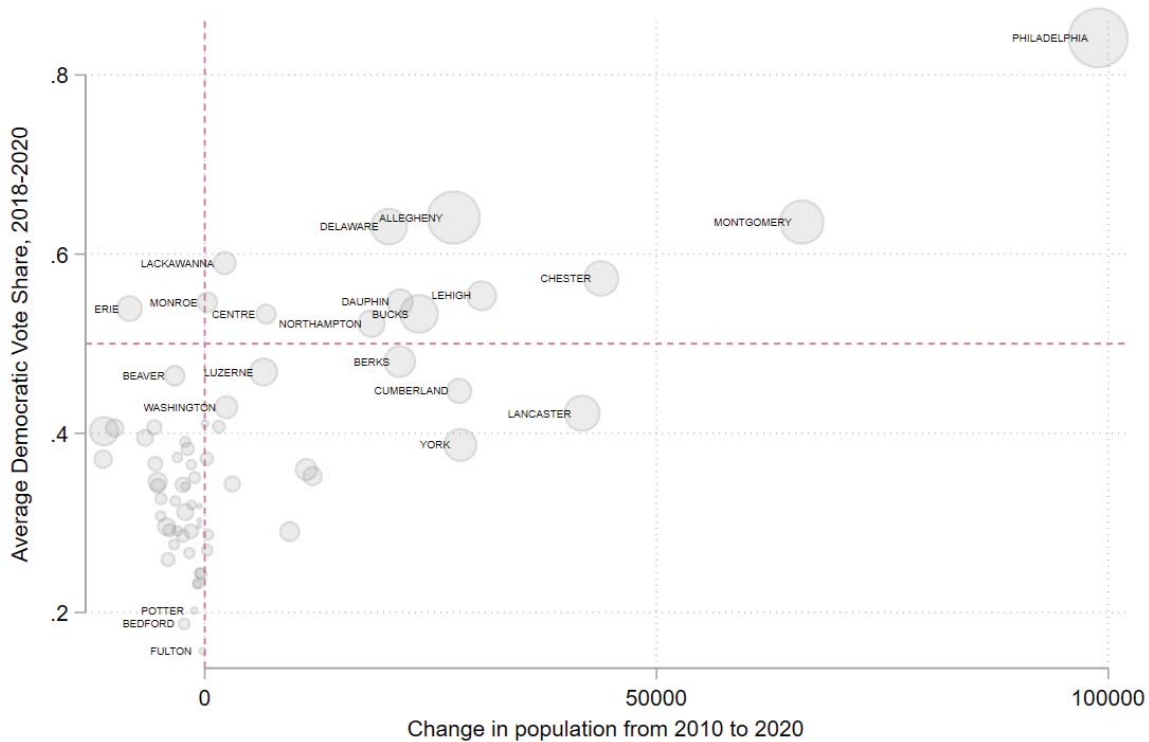
In metro Pittsburgh, the current map places the city of Pittsburgh and its Southern and Eastern suburbs into District 18, with the remainder of Allegheny County and Beaver County placed in District 17. Again, due to moderate population growth, it is straightforward to retain the existing arrangement. This can be achieved by simply moving a small part of suburban Pittsburgh into District 17 and expanding what was formerly called District 18 a bit further into Pittsburgh's exurbs in Westmoreland County.

Due to population loss, the territories of Districts 14 and 16, in the Western corners of the state, must expand toward the central part of the state. In the central part of the state, large population losses, combined with the unavoidable expansion of Districts 14 and 16 into their territory, mean that the area formerly covered by Districts 9, 12, 13, and 15 must now be covered by only three districts rather than four. Each of these districts is currently represented by a Republican incumbent. As a result, unless the map undergoes a more extensive redesign aimed explicitly at protecting these incumbents, two of them will be forced to compete in the same district.

It is worth noting that Pennsylvania's demographic changes are highly correlated with partisanship. In Pennsylvania, as in the rest of the United States, population density is highly correlated with Democratic voting.⁴ In Pennsylvania, as demonstrated in Figure 1, population growth is occurring in relatively dense areas. This means that the places that are gaining population are largely Democratic, and the places that are losing population are largely Republican. This pattern can be visualized in Figure 3, which plots the county-level change in population from 2010 to 2020 on the horizontal axis, and the average Democratic vote share from 2018 and 2020 on the vertical axis.

⁴ See Jonathan Rodden, *Why Cities Lose: The Deep Roots of the Urban-Rural Divide*. New York: Basic Books.

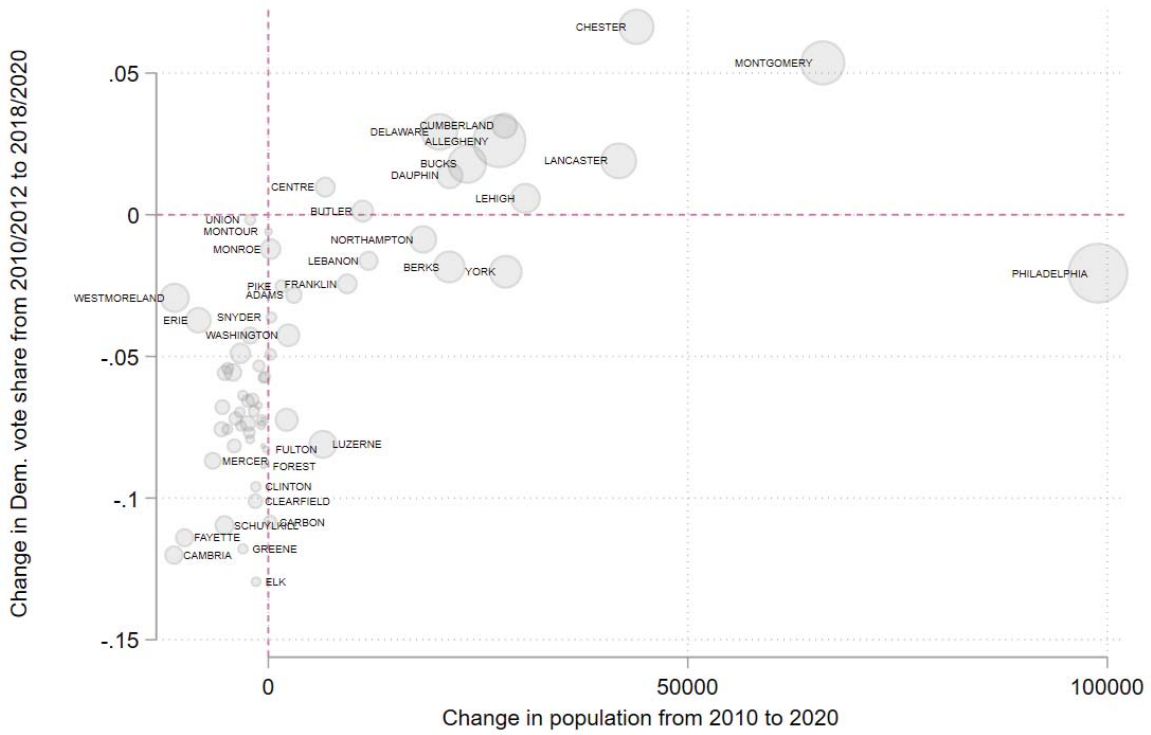
Figure 3: Population Change Since 2010 and Average Democratic Vote Share, Pennsylvania Counties



Moreover, another pronounced trend in Pennsylvania and the rest of the United States is that places that are gaining population are not only more Democratic to begin with, but are becoming *more* Democratic as they gain population. Likewise, places that are losing population are not only relatively Republican to begin with, but are becoming *more* Republican. This can be visualized in Figure 4 below, which, like Figure 3, depicts the change in population from 2010 to 2020 on the horizontal axis, but on the vertical axis, plots the *change* in the Democratic vote share from the average at the beginning of the decade (the 2010 mid-term and the 2012 presidential election) and the average at the end of the decade (the 2018 mid-term and the 2020 presidential election). Figure 4 demonstrates that many of the counties that are gaining the most population—like Chester, Montgomery, and Lancaster—are becoming more Democratic. Philadelphia—already extremely Democratic—is an exception to this pattern.

Note that some of the growing places that are becoming more Democratic, like Montgomery, Chester, and Allegheny Counties, were already quite Democratic. But others, like Lancaster and Cumberland, started out with strong Republican majorities, meaning that they are becoming more competitive over time as they gain population.

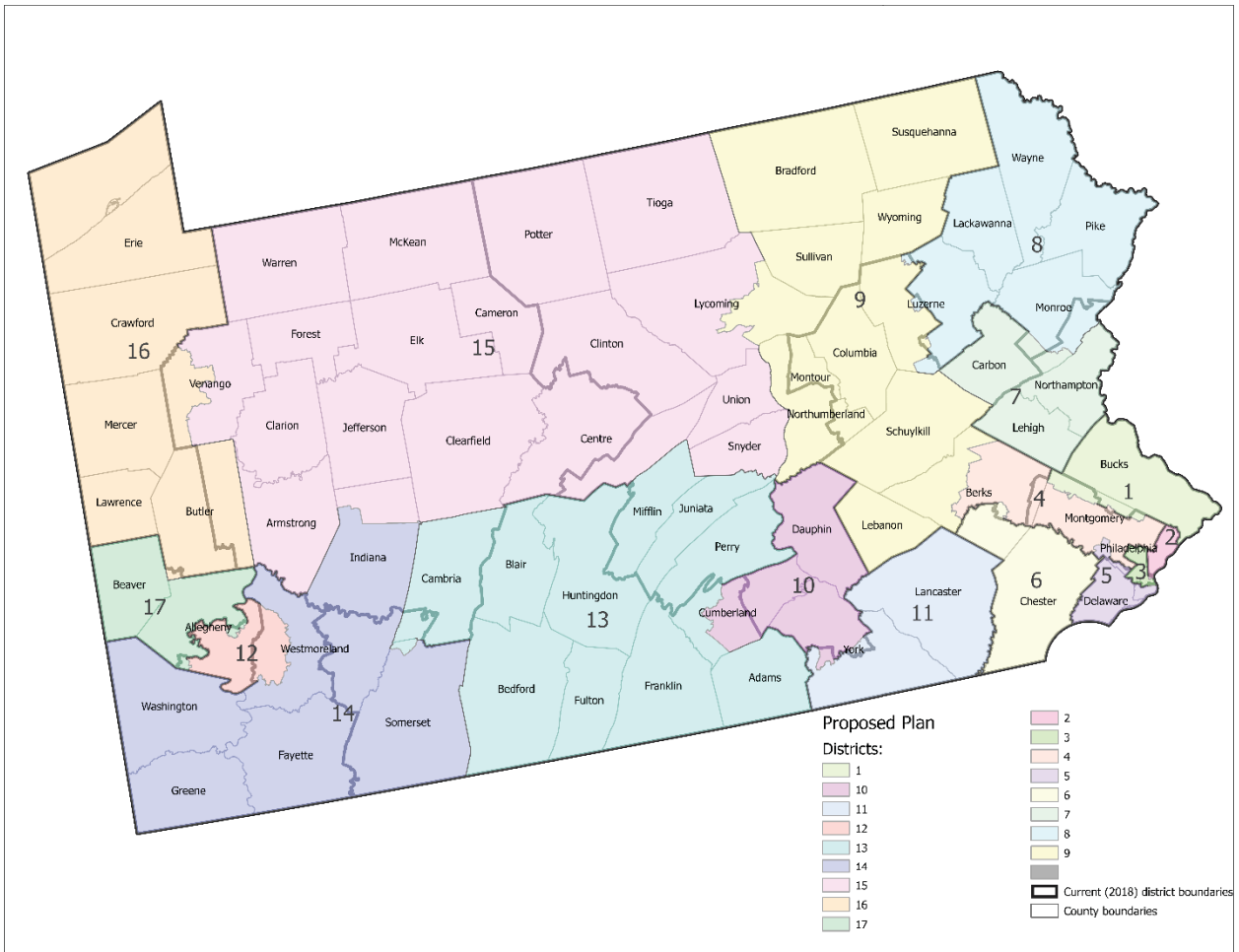
Figure 4: Population Change Since 2010 and Change in Average Democratic Vote Share, Pennsylvania Counties



V. REDISTRICTING PLAN

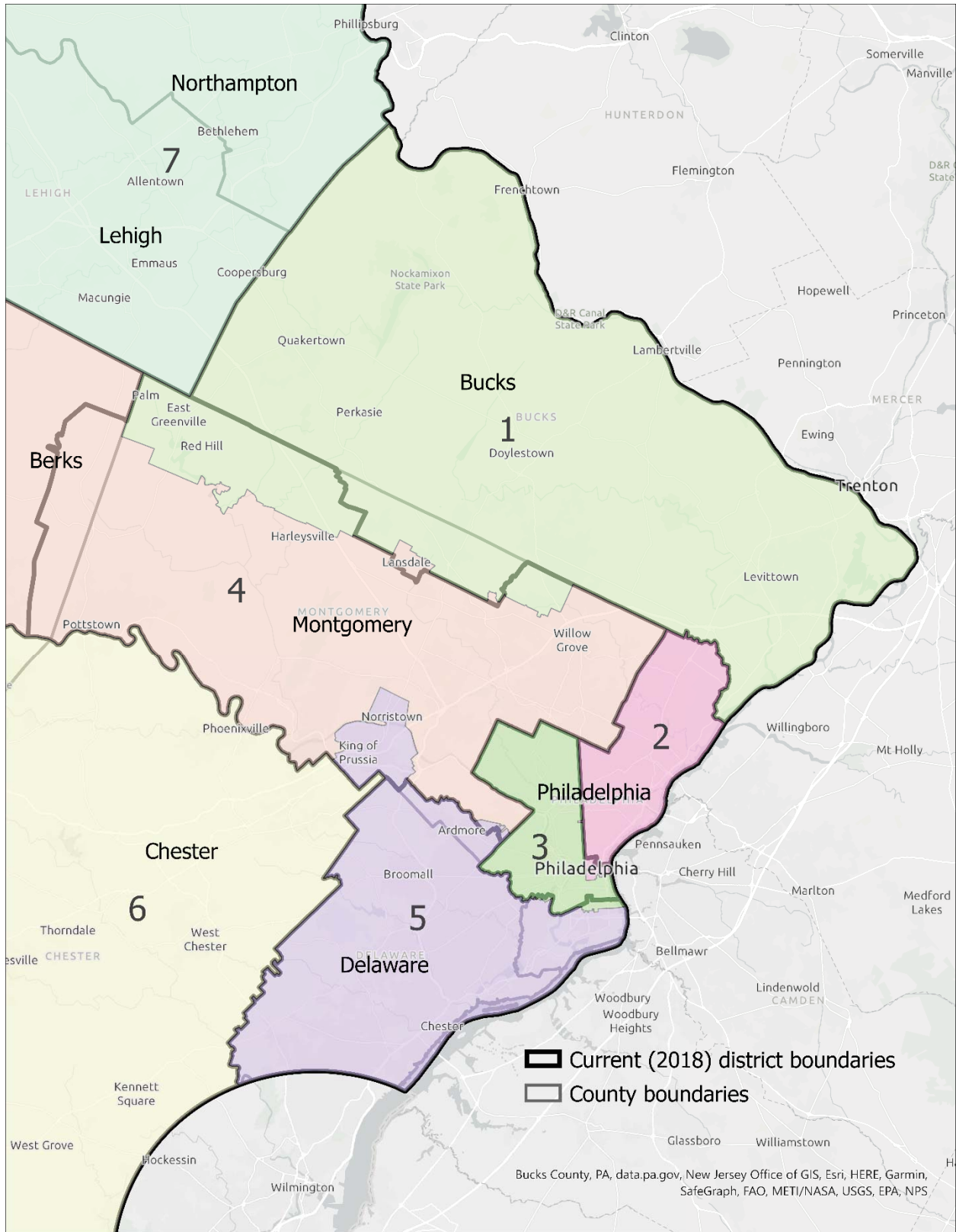
The Carter Plan is depicted in Figure 5, which also includes the boundaries of the previous (2018) plan, in thick gray, as well as the boundaries of Pennsylvania’s counties in thin gray. It is immediately clear that the district boundaries have changed very little in most of Eastern Pennsylvania and the Pittsburgh area, where, as shown in Figure 2, population has grown over the past decade. In contrast, the boundaries in the central part of the state have changed more substantially to accommodate population loss.

Figure 5: Proposed Congressional District Boundaries



Let us begin by taking a closer look at the Philadelphia area, which is displayed in greater detail in Figure 6. First, in the 2018 plan, Philadelphia County was divided into two relatively compact districts, Districts 2 and 3, with a small portion of South Philadelphia spilling into District 5. Since Philadelphia’s population growth has been quite close to overall U.S. population growth, I was able to retain this arrangement, while only slightly altering the boundaries of Districts 2 and 3 in order to achieve population equality.

Figure 6: Philadelphia Area



The previous version of District 1 was comprised mostly of Bucks County, which was kept whole, with a small segment reaching into Montgomery County. Since population growth in Bucks County has been somewhat slow relative to the country as a whole, District 1 required additional population in order to achieve population equality. I followed the same arrangement as before, but simply added additional county subdivisions along the border between Bucks and Montgomery.

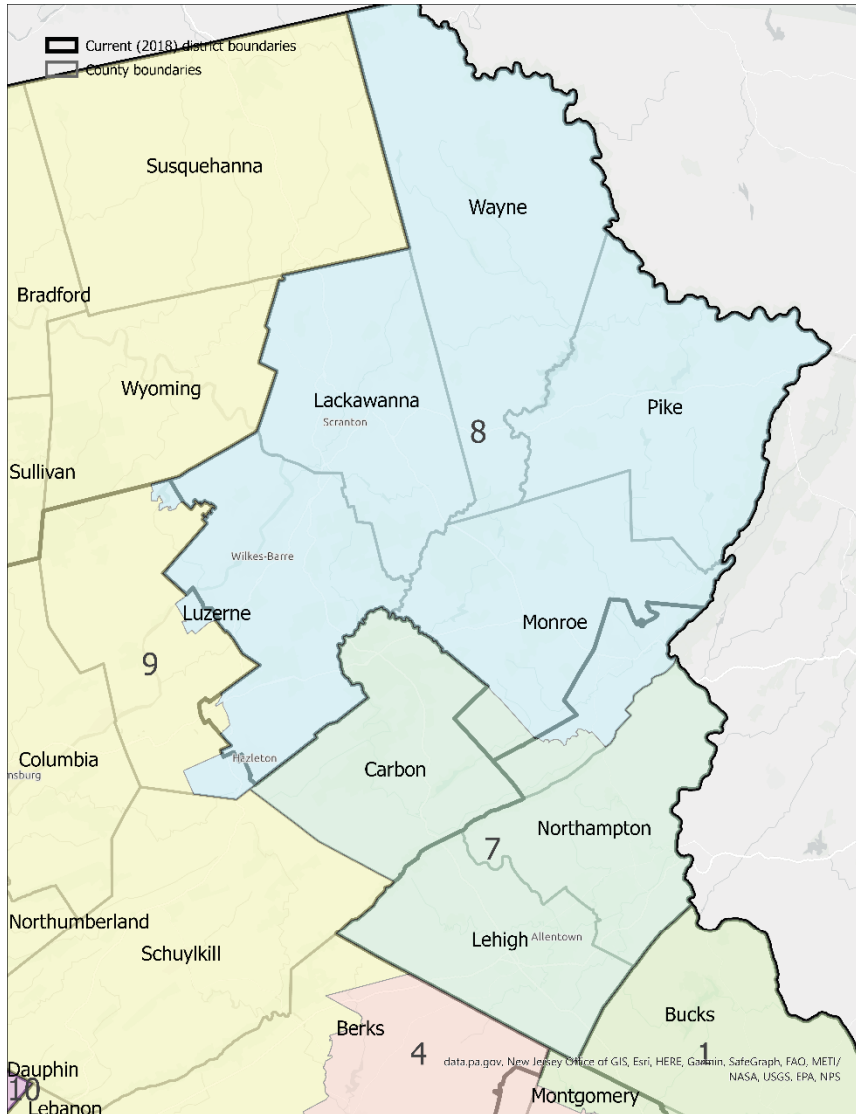
District 5 was based in Delaware County, with a portion reaching into South Philadelphia, and another reaching into Montgomery County. As with Bucks County, population growth was lackluster in District 5, so it was necessary to add population. Reaching into Chester County would have undermined the previous map's respect for several county boundaries to the West, so I elected once again to keep the structure of the existing map, reaching further into Montgomery County and including Norristown in District 5.

The downside of this approach is that it forces Montgomery County-based District 4 much further into Berks County than in the previous map. As quantified below, this makes District 4 less compact than the previous version. I considered alternative configurations that would have expanded District 5 into Chester County, but these approaches inevitably undermined the respect for county boundaries demonstrated by the previous map.

Next, the previous version of District 7 included the Lehigh Valley counties of Lehigh and Northampton and reached its population goal by extending Northward into part of Monroe County. Slow population growth in Northampton County meant that District 7 required additional population. I was able to unify Carbon County with the rest of the Lehigh Valley. The U.S. Census Department recognizes Allentown-Bethlehem-Easton as a metropolitan statistical area consisting of the entirety of Northampton, Lehigh, and Carbon Counties. These counties now constitute the core of District 7 (see Figure 7).

The previous version of District 8 was based in the Northeast corner of the state, including the Scranton-Wilkes-Barre corridor and extending to Hazleton in its Southwest corner. The district needed to add a small amount of population, which was possible to achieve by adding more of Monroe County as well as a couple of municipalities along the district's Western border in Luzerne County.

Figure 7: Districts 7 and 8

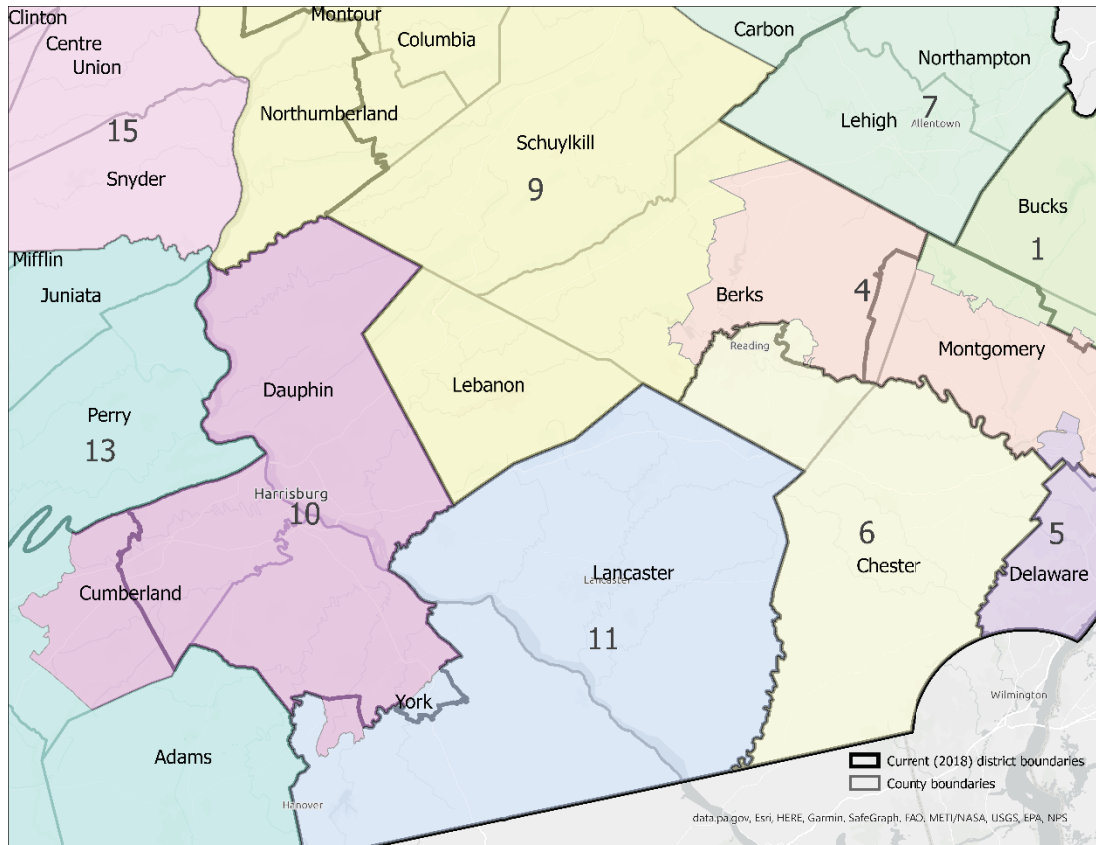


Due to healthy population growth on par with the national average, Districts 6, 10, and 11 required very little alteration (see Figure 8). As before, District 6 contains all of Chester as well as the Southwest corner of Berks County and the city of Reading. It was only necessary to add a small part of Exeter Township.

As in the previous map, District 11 contains all of Lancaster County and the Southern section of York County. It was only necessary to make small changes along the boundary between districts 10 and 11 in order to achieve population equality.

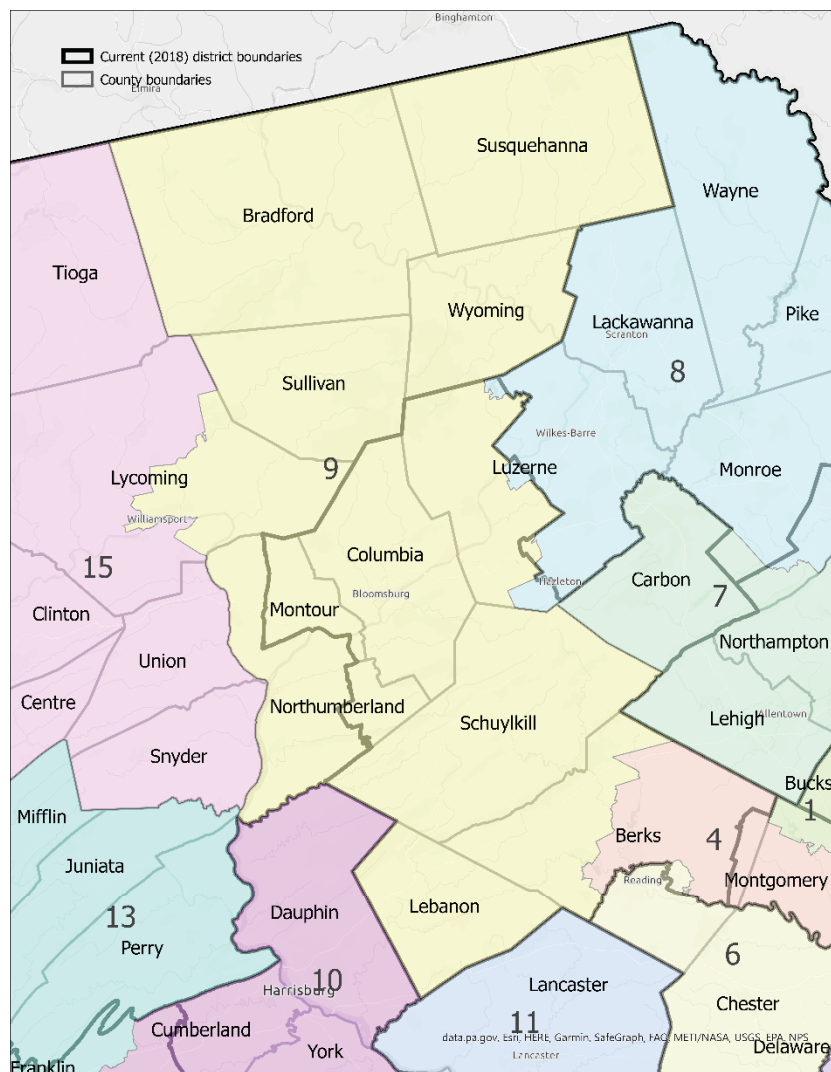
As before, District 10 is centered on the city of Harrisburg, which sits at the confluence of three counties: Dauphin, Cumberland, and York. The only noteworthy change is that the district needed to add a small amount of population by moving somewhat further West into Cumberland County.

Figure 8: Districts 6, 10, and 11



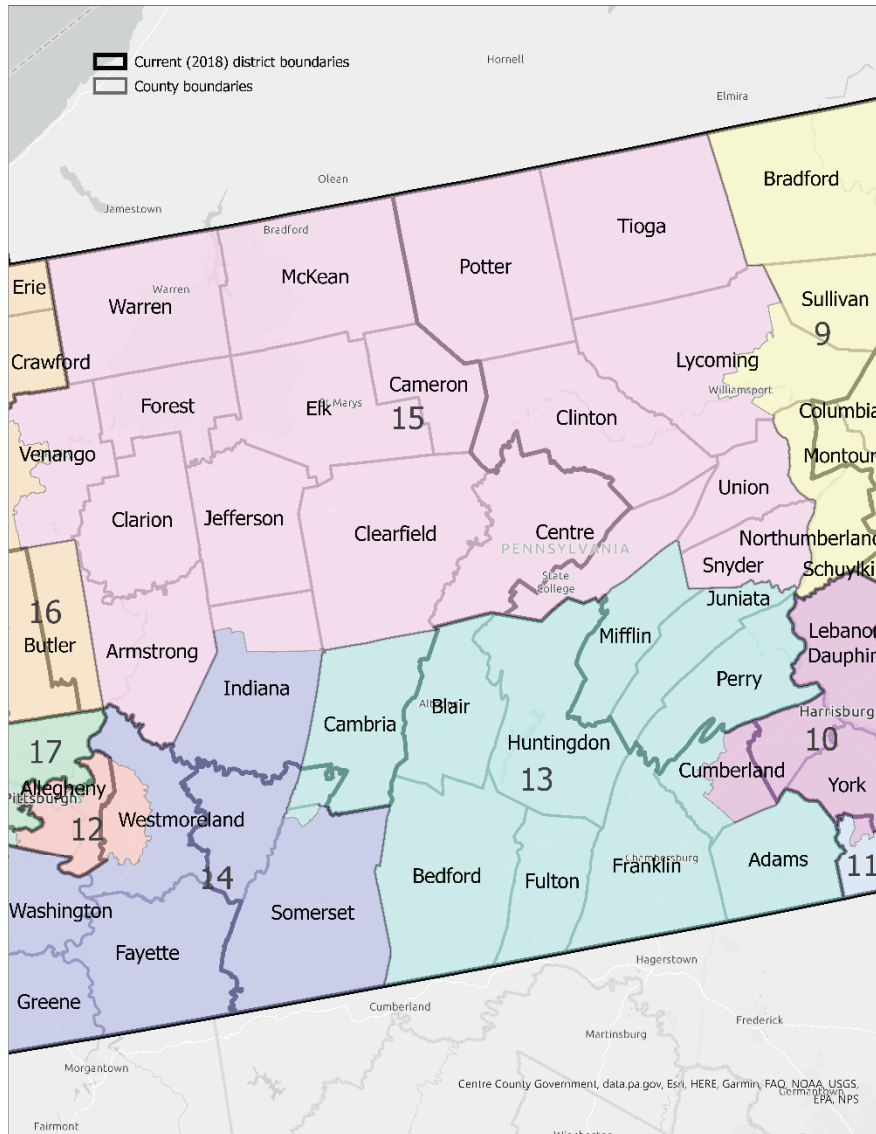
The boundaries of the former District 9 must change somewhat more substantially for a number of reasons (see Figure 9). The old version contained the counties of Columbia, Montour, part of Northumberland, Schuylkill, Carbon, Lebanon, and the rural Northern section of Berks County. However, Eastern counties have nowhere to grow but inwards, and as described above, Carbon County was placed in District 7 to unify a metropolitan statistical area. More importantly, Columbia, Schuylkill, Northumberland, and Montour counties all lost significant population. Thus, in order to achieve the target population, it was necessary for District 9 to grow to the North and West, taking the remainder of Northumberland, all of Bradford, Susquehanna, Sullivan, and Wyoming Counties, as well as part of Lycoming—all areas that had previously been in District 12, which due to severe population loss, cannot be retained.

Figure 9: District 9



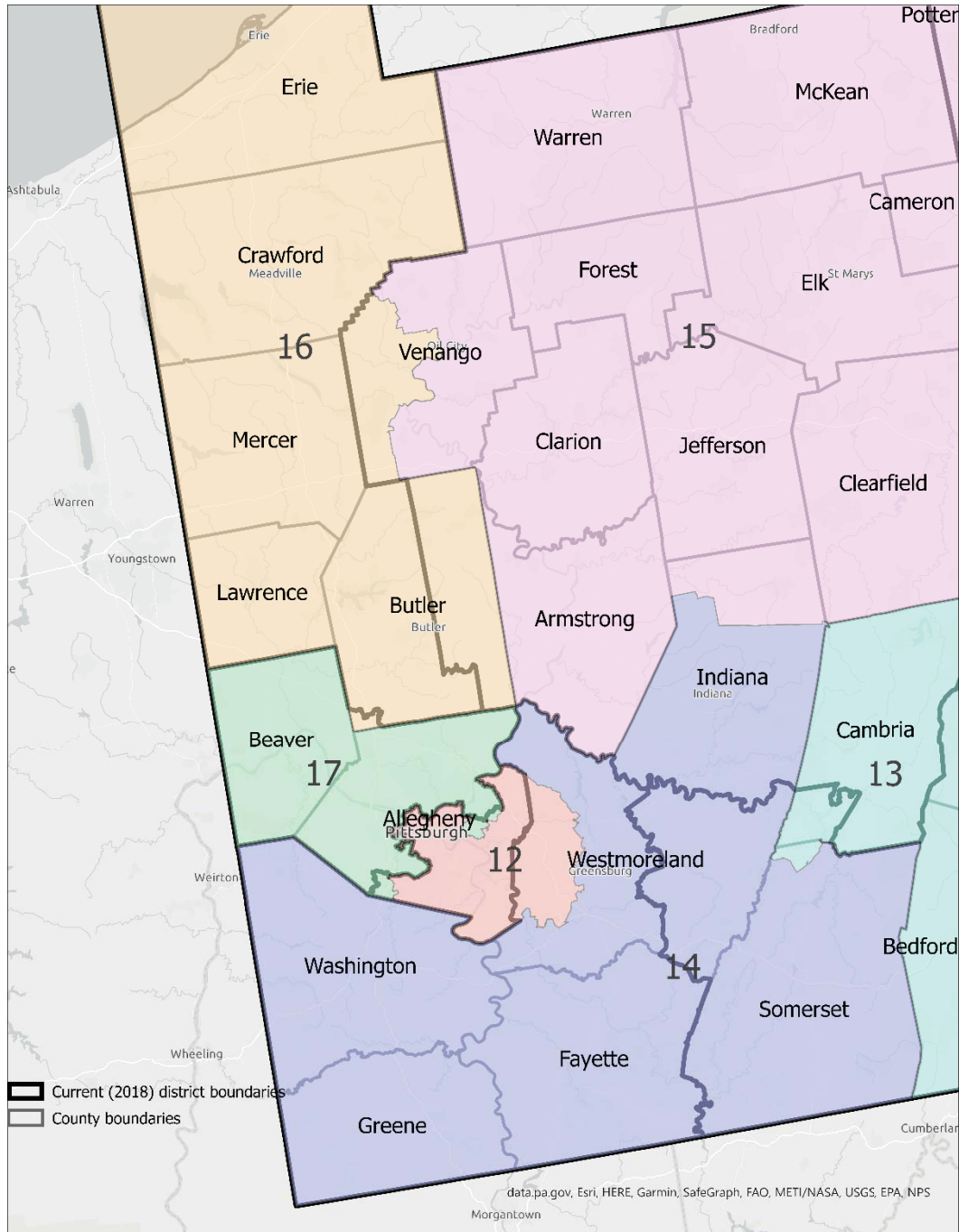
Due to population loss, the old version of District 15 must gain substantial population to its East. As this happens, it necessarily swallows much of the remainder of what was once District 12 (see Figure 10). The new version of District 15 is relatively compact and avoids a split of Centre County that had previously separated State College from some of its suburbs. Like District 15, District 13, which had included a number of rural counties in South-central Pennsylvania that are experiencing population loss, must expand to take the remainder of what was once District 12—the counties of Mifflin, Juniata, and Perry.

Figure 10: Districts 13 and 15



Now, let us consider the Western part of the state. The previous configuration included District 14 in the Southwest corner of the state, and District 16 in the Northwest corner of the state. Due to population loss, both needed to expand to the East. District 16 gained the remainder of Butler County, which had previously been split, and part of Venango County. District 14 expanded Eastward by taking the remainder of Westmoreland County and most of Indiana and Somerset Counties.

Figure 11: Western Pennsylvania (Districts 14, 12, 17, and 16)



Finally, it was straightforward to keep the structure of the metropolitan Pittsburgh districts the same. The previous District 18, now District 12, contained the city of Pittsburgh and its suburbs to the South and East, while District 17 contained the remaining parts of Allegheny County to the North and West of Pittsburgh, along with Beaver County. The boundary between Districts 17 and 18 was largely composed of the Pittsburgh City boundary. District 17 needed to gain a small amount of population. Without violating the boundary of the city of Pittsburgh, it was possible to do this by simply moving a handful of small suburban municipalities from District 18 to District 17. This left Pittsburgh-based District 18 (now 12) somewhat short of population, but it was possible to add this by simply appending suburban and exurban areas in Westmoreland County.

VI. PLAN STATISTICS

Retention of Existing Districts: As described above, I set out to retain the structure of the existing plan to the extent possible. Overall, 87 percent of the population of Pennsylvania falls in the same district as before, though what was formerly called District 18 is called District 12 in the Carter Plan. Table 3 provides information on the share of the population in each individual district in the Carter Plan that remains in the same district. As described above, Districts 9 and 15 changed the most, followed by District 13, as they unavoidably captured what was District 12 in the previous plan due to population loss in Central Pennsylvania. Therefore, it’s unsurprising that residents of these two districts are less likely to have lived in the same district previously.

Table 3: Share of Population in Each Proposed District that Will be in the Same District as in the 2018 Plan

District	Share of population in previous version of district
1	93.26%
2	95.84%
3	94.17%
4	81.65%
5	89.74%
6	98.44%
7	90.56%
8	92.10%
9	65.54%
10	96.20%
11	96.91%
12(18)	85.50%
13	73.39%
14	75.65%
15	59.61%
16	89.95%
17	93.63%

Equal Population: Based on the 2020 Census, the ideal population of each congressional district is 764,865. The Carter Plan includes 4 districts with the ideal population and 13 districts with a deviation of plus or minus one person. District-level details are provided in Table 4.

Table 4: District Population Deviations⁵

District	Population	Deviation from Ideal
1	764866	1
2	764865	0
3	764864	-1
4	764865	0
5	764866	1
6	764864	-1
7	764865	0
8	764866	1
9	764864	-1
10	764864	-1
11	764864	-1
12	764864	-1
13	764864	-1
14	764866	1
15	764864	-1
16	764865	0
17	764864	-1

Contiguity: Each district in the Carter Plan is made up of contiguous territory.

Political Subdivision Splits: Additionally, I have attempted to minimize county splits. The Carter Plan splits 13 counties, 10 of which are split among 2 districts, and 3 of which are split among 3 districts. This amounts to a total of 16 splits. The previous 2018 plan also splits 13 counties, but four of those are split among 3 districts, for a total of 17 county splits. Note that I do not count as a county split a technically non-contiguous fragment of Chester County that contains six people and is marooned in Delaware County due to a bend in Brandywine Creek at the intersection with the Southern state boundary. I also do not count this as a county split in the 2018 redistricting plan, consistent with the Pennsylvania Supreme Court’s approach. The counties in the Carter Plan that are split among three districts are Berks, Philadelphia, and Montgomery. The 2018 plan also split these same counties among three districts, in addition to Butler County, but I was able to eliminate a split contained in the previous plan in the Southwest corner of Butler County.

⁵ The population of each district remains the same whether one uses the 2020 Census redistricting data or the Legislative Reapportionment Commission’s Data Set #1.

The Carter Plan splits the city of Philadelphia between 3 districts and also splits the following 18 county subdivisions between two districts: Horsham and Lower and Upper Marion Townships in Montgomery County; Exeter, Lower Heidelberg, and Perry Townships in Berks County; Ross Township in Monroe County; Newport and Butler Townships in Luzerne County; Jackson Township in York County; North Newton Township in Cumberland County; the city of Williamsport in Lycoming County; Victory Township in Venango County; Swissvale Borough in Allegheny County; Hempfield and South Huntingdon Townships in Westmoreland County; Conemaugh Township in Somerset County; South Mahoning Township in Indiana County. The previous plan also split 19 county subdivisions.

The Carter Plan splits only 14 vote tabulation districts. This is a substantial improvement over the previous 2018 plan, which split 32 VTDs.

Compactness: I also attempted to retain the overall compactness of the previous plan. Table 5 provides compactness statistics for the same measures of compactness relied upon by the Court in its deliberations in 2018. For each of these scores, higher numbers indicate more-compact districts.

Table 5: Compactness Statistics: Previous (2018) Plan and Proposed Plan

District	Reock, Carter	Reock, 2018 plan	Schwartzberg, Carter	Schwartzberg, 2018 plan	Polsby-Popper, Carter	Polsby-Popper, 2018 plan	Population Polygon, Carter	Population Polygon, 2018 plan	Area/Convex Hull, Carter	Area/Convex Hull, 2018 plan
1	0.4	0.43	1.5	1.43	0.4	0.46	0.75	0.78	0.82	0.83
2	0.33	0.37	1.49	1.42	0.42	0.47	0.92	0.96	0.84	0.86
3	0.4	0.43	1.72	1.63	0.32	0.36	0.78	0.8	0.72	0.74
4	0.27	0.41	2.29	1.73	0.17	0.31	0.51	0.64	0.68	0.81
5	0.41	0.44	1.86	1.54	0.27	0.38	0.6	0.69	0.72	0.84
6	0.45	0.45	1.68	1.69	0.29	0.29	0.83	0.82	0.73	0.72
7	0.57	0.41	1.45	1.5	0.42	0.42	0.92	0.95	0.78	0.83
8	0.47	0.49	1.67	1.73	0.28	0.28	0.91	0.88	0.74	0.75
9	0.41	0.55	1.83	1.94	0.28	0.25	0.54	0.53	0.74	0.74
10	0.49	0.49	1.76	1.72	0.27	0.29	0.86	0.88	0.71	0.76
11	0.45	0.45	1.49	1.51	0.37	0.37	0.79	0.78	0.88	0.88
12 (18)	0.63	0.46	2.13	2.21	0.18	0.18	0.75	0.75	0.78	0.72
13	0.56	0.4	1.56	1.81	0.39	0.26	0.68	0.75	0.83	0.79
14	0.47	0.54	1.76	1.63	0.3	0.34	0.35	0.37	0.76	0.77
15	0.57	0.67	1.49	1.46	0.43	0.42	0.74	0.69	0.86	0.86
16	0.36	0.32	1.42	1.43	0.39	0.38	0.92	0.87	0.87	0.8
17	0.51	0.51	1.85	1.8	0.26	0.28	0.6	0.6	0.76	0.76
Average	0.46	0.46	1.7	1.67	0.32	0.33	0.73	0.74	0.78	0.79

Averaging across all districts, the compactness of the Carter Plan is similar to that of the previous plan when examining the Reock score, and slightly more compact when considering the Schwartzberg score. The Carter Plan is very slightly less compact than the existing plan when using the Polsby-Popper, Population Polygon, and Area/Convex Hull scores. Table 5 reveals that this difference is driven largely by Districts 4 and 5, which, as described above, had to become somewhat less compact in order to accommodate asymmetries in the rate of population growth between Montgomery, Delaware, and Bucks counties while minimizing county splits in Southeastern Pennsylvania.

Minority Representation: I did not consider racial data as I was drawing districts or making adjustments for population changes in the map.

Incumbent Addresses: I considered incumbent addresses to confirm that I was not inadvertently double-bunking sitting congressional representatives in the same district. Since I made very minor changes to most districts, as described above, I did not inadvertently remove any incumbents from their existing districts. Note that Representative Dean, the incumbent in District 4, appears to have recently moved to a new address a short distance away from the previous address, both of which are in Montgomery County. However, the new address is also in District 4, both in its previous manifestation and in the Carter Plan's configuration. As described above, it was not possible to avoid placing Rep. Keller from District 12, which was lost due to population loss, with another rural representative. The Carter Plan ends up placing Rep. Keller in District 15, along with incumbent Rep. Thompson. The consideration of these residential addresses had no impact on the Carter Plan's satisfaction of traditional redistricting criteria.

Partisan Performance: I did not consider partisan performance as I was drawing the map. However, upon analysis, the proposed redistricting plan is quite similar to the previous plan in terms of partisanship. Of course, it is not possible to examine results of congressional races that have not yet occurred. To draw inferences about the partisanship of these districts, it is useful to begin by adding up precinct-level results of recent statewide elections within the proposed boundaries. In Table 6, I do this for statewide elections from 2016 to 2020, taking an average for each district, and in order to facilitate comparisons with the previous (2018) plan, presented above in Table 2, I also focus on elections from 2018 to 2020 only.

As in the previous plan, there are 10 metropolitan districts where in statewide races, the average Democratic vote share is above 50 percent. These are the same 10 districts for which this was true in the previous plan. This is not surprising, since as described above, the metropolitan districts required minimal change to equalize population and thus retained many of the same voters.

It should be noted, however, that several of these districts are very evenly divided between the parties and, as described above, incumbent legislators often over- or under-perform relative to their statewide co-partisans—sometimes quite substantially. Fortunately, because there is so much overlap between the old and new districts, and since incumbents are running in each of the highly competitive districts, it is possible to do better than simply relying on the statewide aggregates when assessing the most likely outcomes of future elections.

Table 6: Statewide Election Results Aggregated to the Proposed Congressional Boundaries

District	Average Democratic Statewide vote share, 2016-2020	Average Democratic Statewide vote share, 2018-2020
1	51.81%	53.00%
2	74.57%	74.03%
3	91.11%	91.32%
4	58.59%	60.07%
5	64.67%	65.82%
6	55.01%	56.56%
7	50.88%	51.70%
8	51.01%	51.62%
9	33.42%	33.82%
10	46.81%	48.15%
11	38.37%	39.30%
12	62.03%	63.06%
13	29.12%	29.19%
14	38.39%	38.76%
15	33.51%	33.51%
16	41.55%	42.39%
17	53.99%	55.52%

In two of the districts with nominal Democratic majorities, these majorities are very narrow. In District 7, the average statewide Democratic vote share is between 50.9 percent and 51.7 percent, depending on which elections are included. As conveyed in Table 2 above, on average, the vote share of the Democratic incumbent in District 7 is slightly lower than that of her statewide Democratic co-partisans. As a result, District 7 can be viewed as a tossup district with a very slight Democratic lean.

In District 8, the average statewide Democratic vote share is between 51 percent and 51.6 percent, depending on which elections are used. Since Matt Cartwright, the Democratic incumbent, outperforms his statewide co-partisans by around 2 percentage points, this should be seen as a competitive but Democratic-leaning district. Even a relatively modest pro-Republican wave has the potential to unseat the incumbents in both Districts 7 and 8.

In District 1, the average statewide Democratic vote share is between 51.8 percent and 53 percent. However, as demonstrated above, on average, the incumbent Republican candidate, Representative Fitzpatrick, outperformed his statewide co-partisans by an astounding 7.5 percentage points. There is no reason to anticipate that this advantage will suddenly disappear, especially since 93 percent of the people in District 1 in the Carter Plan already lived in the district

that has repeatedly elected Representative Fitzpatrick in the past. If we use all the information at hand, District 1 should be understood as a very likely Republican district.

The other relatively competitive district is number 10, which contains metro Harrisburg and surroundings. The average Republican statewide vote share in this district is between 51.9 percent and 53.2 percent. The incumbent in this district, where 96 percent of voters are the same as before, outperforms his statewide co-partisans by a little over 1 percentage point. This makes District 10 a likely Republican seat, but one that could potentially change hands in the event of a very large pro-Democratic wave.

In sum, using all the information at our disposal, the proposed plan produces 8 districts where Democrats are expected to win, one of which (District 8) is potentially quite competitive; 8 districts where Republicans are quite likely to win, two of which are at least potentially competitive (1 and 10); and one district (District 7) that is a toss-up with a very slight Democratic lean. This level of partisan balance and competitiveness is similar to that of the existing plan, reflective of Pennsylvania's statewide partisan preferences, and consistent with changes in population as they relate to partisanship.

VII. CONCLUSION

The remedial redistricting plan endorsed by the Pennsylvania Supreme Court in 2018 demonstrated numerous admirable features including adherence to traditional redistricting principles as well as partisan fairness and responsiveness. This report introduces a new redistricting plan, the Carter Plan, that builds on those achievements, preserving the architecture of districts and matching or surpassing the previous plan with respect to compactness, contiguity, population equality, and splits of counties, county subdivisions, and vote tabulation districts. Moreover, this plan is likely to produce a Congressional delegation that reflects the statewide partisan preferences of Pennsylvanians, and one that changes in response to changes in those preferences.

I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information, and belief. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Jonathan Rodden

January 24, 2022

Exhibit A

Jonathan Rodden

Stanford University
Department of Political Science
Encina Hall Central
616 Serra Street
Stanford, CA 94305

Phone: (650) 723-5219
Email: jrodden@stanford.edu
Homepage: <http://www.jonathanrodden.com>

Personal

Born on August 18, 1971, St. Louis, MO.

United States Citizen.

Education

Ph.D. Political Science, Yale University, 2000.

Fulbright Scholar, University of Leipzig, Germany, 1993–1994.

B.A., Political Science, University of Michigan, 1993.

Academic Positions

Professor, Department of Political Science, Stanford University, 2012–present.

Senior Fellow, Stanford Institute for Economic Policy Research, 2020–present.

Senior Fellow, Hoover Institution, Stanford University, 2012–present.

Director, Spatial Social Science Lab, Stanford University, 2012–present.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, 2010–2012.

Associate Professor, Department of Political Science, Stanford University, 2007–2012.

Fellow, Center for Advanced Study in the Behavioral Sciences, Palo Alto, CA, 2006–2007.

Ford Career Development Associate Professor of Political Science, MIT, 2003–2006.

Visiting Scholar, Center for Basic Research in the Social Sciences, Harvard University, 2004.

Assistant Professor of Political Science, MIT, 1999–2003.

Instructor, Department of Political Science and School of Management, Yale University, 1997–1999.

Publications

Books

Why Cities Lose: The Deep Roots of the Urban-Rural Divide. Basic Books, 2019.

Decentralized Governance and Accountability: Academic Research and the Future of Donor Programming. Co-edited with Erik Wibbels, Cambridge University Press, 2019.

Hamilton's Paradox: The Promise and Peril of Fiscal Federalism, Cambridge University Press, 2006. Winner, Gregory Luebbert Award for Best Book in Comparative Politics, 2007; Martha Derthick Award for lasting contribution to the study of federalism, 2021.

Fiscal Decentralization and the Challenge of Hard Budget Constraints, MIT Press, 2003. Co-edited with Gunnar Eskeland and Jennie Litvack.

Peer Reviewed Journal Articles

Who Registers? Village Networks, Household Dynamics, and Voter Registration in Rural Uganda, 2021, *Comparative Political Studies* forthcoming (with Romain Ferrali, Guy Grossman, and Melina Platas).

Partisan Dislocation: A Precinct-Level Measure of Representation and Gerrymandering, 2021, *Political Analysis* forthcoming (with Daryl DeFord Nick Eubank).

Who is my Neighbor? The Spatial Efficiency of Partisanship, 2020, *Statistics and Public Policy* 7(1):87-100 (with Nick Eubank).

Handgun Ownership and Suicide in California, 2020, *New England Journal of Medicine* 382:2220-2229 (with David M. Studdert, Yifan Zhang, Sonja A. Swanson, Lea Prince, Erin E. Holsinger, Matthew J. Spittal, Garen J. Wintemute, and Matthew Miller).

Viral Voting: Social Networks and Political Participation, 2020, *Quarterly Journal of Political Science* (with Nick Eubank, Guy Grossman, and Melina Platas).

It Takes a Village: Peer Effects and Externalities in Technology Adoption, 2020, *American Journal of Political Science* (with Romain Ferrali, Guy Grossman, and Melina Platas). Winner, 2020 Best Conference Paper Award, American Political Science Association Network Section.

Assembly of the LongSHOT Cohort: Public Record Linkage on a Grand Scale, 2019, *Injury Prevention* (with Yifan Zhang, Erin Holsinger, Lea Prince, Sonja Swanson, Matthew Miller, Garen Wintemute, and David Studdert).

Crowdsourcing Accountability: ICT for Service Delivery, 2018, *World Development* 112: 74-87 (with Guy Grossman and Melina Platas).

Geography, Uncertainty, and Polarization, 2018, *Political Science Research and Methods* doi:10.1017/psrm.2018.12 (with Nolan McCarty, Boris Shor, Chris Tausanovitch, and Chris Warshaw).

Handgun Acquisitions in California after Two Mass Shootings, 2017, *Annals of Internal Medicine* 166(10):698-706. (with David Studdert, Yifan Zhang, Rob Hyndman, and Garen Wintemute).

Cutting Through the Thicket: Redistricting Simulations and the Detection of Partisan Gerrymanders, 2015, *Election Law Journal* 14,4:1-15 (with Jowei Chen).

The Achilles Heel of Plurality Systems: Geography and Representation in Multi-Party Democracies, 2015, *American Journal of Political Science* 59,4: 789-805 (with Ernesto Calvo). Winner, Michael Wallerstein Award for best paper in political economy, American Political Science Association.

Why has U.S. Policy Uncertainty Risen Since 1960?, 2014, *American Economic Review: Papers and Proceedings* May 2014 (with Nicholas Bloom, Brandice Canes-Wrone, Scott Baker, and Steven Davis).

Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures, 2013, *Quarterly Journal of Political Science* 8: 239-269 (with Jowei Chen).

How Should We Measure District-Level Public Opinion on Individual Issues?, 2012, *Journal of Politics* 74, 1: 203-219 (with Chris Warshaw).

Representation and Redistribution in Federations, 2011, *Proceedings of the National Academy of Sciences* 108, 21:8601-8604 (with Tiberiu Dragu).

Dual Accountability and the Nationalization of Party Competition: Evidence from Four Federations, 2011, *Party Politics* 17, 5: 629-653 (with Erik Wibbels).

The Geographic Distribution of Political Preferences, 2010, *Annual Review of Political Science* 13: 297-340.

Fiscal Decentralization and the Business Cycle: An Empirical Study of Seven Federations, 2009, *Economics and Politics* 22,1: 37-67 (with Erik Wibbels).

Getting into the Game: Legislative Bargaining, Distributive Politics, and EU Enlargement, 2009, *Public Finance and Management* 9, 4 (with Deniz Aksoy).

The Strength of Issues: Using Multiple Measures to Gauge Preference Stability, Ideological Constraint, and Issue Voting, 2008. *American Political Science Review* 102, 2: 215-232 (with Stephen Ansolabehere and James Snyder).

Does Religion Distract the Poor? Income and Issue Voting Around the World, 2008, *Comparative Political Studies* 41, 4: 437-476 (with Ana Lorena De La O).

Purple America, 2006, *Journal of Economic Perspectives* 20,2 (Spring): 97-118 (with Stephen Ansolabehere and James Snyder).

Economic Geography and Economic Voting: Evidence from the U.S. States, 2006, *British Journal of Political Science* 36, 3: 527-47 (with Michael Ebeid).

Distributive Politics in a Federation: Electoral Strategies, Legislative Bargaining, and Government Coalitions, 2004, *Dados* 47, 3 (with Marta Arretche, in Portuguese).

Comparative Federalism and Decentralization: On Meaning and Measurement, 2004, *Comparative Politics* 36, 4: 481-500. (Portuguese version, 2005, in *Revista de Sociologia e Politica* 25).

Reviving Leviathan: Fiscal Federalism and the Growth of Government, 2003, *International Organization* 57 (Fall), 695-729.

Beyond the Fiction of Federalism: Macroeconomic Management in Multi-tiered Systems, 2003, *World Politics* 54, 4 (July): 494-531 (with Erik Wibbels).

The Dilemma of Fiscal Federalism: Grants and Fiscal Performance around the World, 2002, *American Journal of Political Science* 46(3): 670-687.

Strength in Numbers: Representation and Redistribution in the European Union, 2002, *European Union Politics* 3, 2: 151-175.

Does Federalism Preserve Markets? *Virginia Law Review* 83, 7 (with Susan Rose-Ackerman). Spanish version, 1999, in *Quorum* 68.

Working Papers

Elections, Political Polarization, and Economic Uncertainty, NBER Working Paper 27961 (with Scott Baker, Aniket Baksy, Nicholas Bloom, and Steven Davis).

Federalism and Inter-regional Redistribution, Working Paper 2009/3, Institut d’Economia de Barcelona.

Representation and Regional Redistribution in Federations, Working Paper 2010/16, Institut d’Economia de Barcelona (with Tiberiu Dragu).

Chapters in Books

Political Geography and Representation: A Case Study of Districting in Pennsylvania (with Thomas Weighill), in *Political Geometry*, edited by Moon Duchin and Olivia Walch, forthcoming 2021, Springer.

Keeping Your Enemies Close: Electoral Rules and Partisan Polarization, in *The New Politics of Insecurity*, edited by Frances Rosenbluth and Margaret Weir, forthcoming 2021, Cambridge University Press.

Decentralized Rule and Revenue, 2019, in Jonathan Rodden and Erik Wibbels, eds., *Decentralized Governance and Accountability*, Cambridge University Press.

Geography and Gridlock in the United States, 2014, in Nathaniel Persily, ed. *Solutions to Political Polarization in America*, Cambridge University Press.

Can Market Discipline Survive in the U.S. Federation?, 2013, in Daniel Nadler and Paul Peterson, eds, *The Global Debt Crisis: Haunting U.S. and European Federalism*, Brookings Press.

Market Discipline and U.S. Federalism, 2012, in Peter Conti-Brown and David A. Skeel, Jr., eds, *When States Go Broke: The Origins, Context, and Solutions for the American States in Fiscal Crisis*, Cambridge University Press.

Federalism and Inter-Regional Redistribution, 2010, in Nuria Bosch, Marta Espasa, and Albert Sole Olle, eds., *The Political Economy of Inter-Regional Fiscal Flows*, Edward Elgar.

Back to the Future: Endogenous Institutions and Comparative Politics, 2009, in Mark Lichbach and Alan Zuckerman, eds., *Comparative Politics: Rationality, Culture, and Structure* (Second Edition), Cambridge University Press.

The Political Economy of Federalism, 2006, in Barry Weingast and Donald Wittman, eds., *Oxford Handbook of Political Economy*, Oxford University Press.

Fiscal Discipline in Federations: Germany and the EMU, 2006, in Peter Wierds, Servaas Deroose, Elena Flores and Alessandro Turrini, eds., *Fiscal Policy Surveillance in Europe*, Palgrave MacMillan.

The Political Economy of Pro-cyclical Decentralised Finance (with Erik Wibbels), 2006, in Peter Wierds, Servaas Deroose, Elena Flores and Alessandro Turrini, eds., *Fiscal Policy Surveillance in Europe*, Palgrave MacMillan.

Globalization and Fiscal Decentralization, (with Geoffrey Garrett), 2003, in Miles Kahler and David Lake, eds., *Governance in a Global Economy: Political Authority in Transition*, Princeton University Press: 87-109. (Updated version, 2007, in David Cameron, Gustav Ranis, and Annalisa Zinn, eds., *Globalization and Self-Determination: Is the Nation-State under Siege?* Routledge.)

Introduction and Overview (Chapter 1), 2003, in Rodden et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Soft Budget Constraints and German Federalism (Chapter 5), 2003, in Rodden, et al, *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Federalism and Bailouts in Brazil (Chapter 7), 2003, in Rodden, et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Lessons and Conclusions (Chapter 13), 2003, in Rodden, et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Online Interactive Visualization

Stanford Election Atlas, 2012 (collaboration with Stephen Ansolabehere at Harvard and Jim Herries at ESRI)

Other Publications

Supporting Advanced Manufacturing in Alabama, Report to the Alabama Innovation Commission, Hoover Institution, 2021.

How America's Urban-Rural Divide has Shaped the Pandemic, 2020, *Foreign Affairs*, April 20, 2020.

An Evolutionary Path for the European Monetary Fund? A Comparative Perspective, 2017, Briefing paper for the Economic and Financial Affairs Committee of the European Parliament.

Representation and Regional Redistribution in Federations: A Research Report, 2009, in *World Report on Fiscal Federalism*, Institut d'Economia de Barcelona.

On the Migration of Fiscal Sovereignty, 2004, *PS: Political Science and Politics* July, 2004: 427-431.

Decentralization and the Challenge of Hard Budget Constraints, *PREM Note 41*, Poverty Reduction and Economic Management Unit, World Bank, Washington, D.C. (July).

Decentralization and Hard Budget Constraints, *APSA-CP* (Newsletter of the Organized Section in Comparative Politics, American Political Science Association) 11:1 (with Jennie Litvack).

Book Review of *The Government of Money* by Peter Johnson, *Comparative Political Studies* 32,7: 897-900.

Fellowships, Honors, and Grants

John Simon Guggenheim Memorial Foundation Fellowship, 2021.

Martha Derthick Award of the American Political Science Association for "the best book published at least ten years ago that has made a lasting contribution to the study of federalism and intergovernmental relations," 2021.

National Institutes of Health, funding for "Relationship between lawful handgun ownership and risk of homicide victimization in the home," 2021.

National Collaborative on Gun Violence Research, funding for "Cohort Study Of Firearm-Related Mortality Among Cohabitants Of Handgun Owners." 2020.

Fund for a Safer Future, Longitudinal Study of Handgun Ownership and Transfer (LongSHOT), GA004696, 2017-2018.

Stanford Institute for Innovation in Developing Economies, Innovation and Entrepreneurship research grant, 2015.

Michael Wallerstein Award for best paper in political economy, American Political Science Association, 2016.

Common Cause Gerrymandering Standard Writing Competition, 2015.

General support grant from the Hewlett Foundation for Spatial Social Science Lab, 2014.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2012.

Sloan Foundation, grant for assembly of geo-referenced precinct-level electoral data set (with Stephen Ansolabehere and James Snyder), 2009-2011.

Hoagland Award Fund for Innovations in Undergraduate Teaching, Stanford University, 2009.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, beginning Fall 2010.

Research Grant on Fiscal Federalism, Institut d'Economia de Barcelona, 2009.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2008.

United Postal Service Foundation grant for study of the spatial distribution of income in cities, 2008.

Gregory Luebbert Award for Best Book in Comparative Politics, 2007.

Fellow, Center for Advanced Study in the Behavioral Sciences, 2006-2007.

National Science Foundation grant for assembly of cross-national provincial-level dataset on elections, public finance, and government composition, 2003-2004 (with Erik Wibbels).

MIT Dean's Fund and School of Humanities, Arts, and Social Sciences Research Funds.

Funding from DAAD (German Academic Exchange Service), MIT, and Harvard EU Center to organize the conference, "European Fiscal Federalism in Comparative Perspective," held at Harvard University, November 4, 2000.

Canadian Studies Fellowship (Canadian Federal Government), 1996-1997.

Prize Teaching Fellowship, Yale University, 1998-1999.

Fulbright Grant, University of Leipzig, Germany, 1993-1994.

Michigan Association of Governing Boards Award, one of two top graduating students at the University of Michigan, 1993.

W. J. Bryan Prize, top graduating senior in political science department at the University of Michigan, 1993.

Other Professional Activities

Selection committee, best paper award, American Journal of Political Science.

International Advisory Committee, Center for Metropolitan Studies, Sao Paulo, Brazil, 2006-2010.

Selection committee, Mancur Olson Prize awarded by the American Political Science Association Political Economy Section for the best dissertation in the field of political economy.

Selection committee, Gregory Luebbert Best Book Award.

Selection committee, William Anderson Prize, awarded by the American Political Science Association for the best dissertation in the field of federalism and intergovernmental relations.

Courses

Undergraduate

Politics, Economics, and Democracy
Introduction to Comparative Politics
Introduction to Political Science
Political Science Scope and Methods
Institutional Economics
Spatial Approaches to Social Science

Graduate

Political Economy
Political Economy of Institutions
Federalism and Fiscal Decentralization
Politics and Geography

Consulting

2017. Economic and Financial Affairs Committee of the European Parliament.

2016. Briefing paper for the World Bank on fiscal federalism in Brazil.

2013-2018: Principal Investigator, SMS for Better Governance (a collaborative project involving USAID, Social Impact, and UNICEF in Arua, Uganda).

2019: Written expert testimony in *McLemore, Holmes, Robinson, and Woullard v. Hosemann*, United States District Court, Mississippi.

2019: Expert witness in *Nancy Corola Jacobson v. Detzner*, United States District Court, Florida.

2018: Written expert testimony in *League of Women Voters of Florida v. Detzner* No. 4:18-cv-002510, United States District Court, Florida.

2018: Written expert testimony in *College Democrats of the University of Michigan, et al. v. Johnson, et al.*, United States District Court for the Eastern District of Michigan.

2017: Expert witness in *Bethune-Hill v. Virginia Board of Elections*, No. 3:14-CV-00852, United States District Court for the Eastern District of Virginia.

2017: Expert witness in *Arizona Democratic Party, et al. v. Reagan, et al.*, No. 2:16-CV-01065, United States District Court for Arizona.

2016: Expert witness in *Lee v. Virginia Board of Elections*, 3:15-cv-357, United States District Court for the Eastern District of Virginia, Richmond Division.

2016: Expert witness in *Missouri NAACP v. Ferguson-Florissant School District*, United States District Court for the Eastern District of Missouri, Eastern Division.

2014-2015: Written expert testimony in *League of Women Voters of Florida et al. v. Detzner, et al.*, 2012-CA-002842 in Florida Circuit Court, Leon County (Florida Senate redistricting case).

2013-2014: Expert witness in *Romo v Detzner*, 2012-CA-000412 in Florida Circuit Court, Leon County (Florida Congressional redistricting case).

2011-2014: Consultation with investment groups and hedge funds on European debt crisis.

2011-2014: Lead Outcome Expert, Democracy and Governance, USAID and Social Impact.

2010: USAID, Review of USAID analysis of decentralization in Africa.

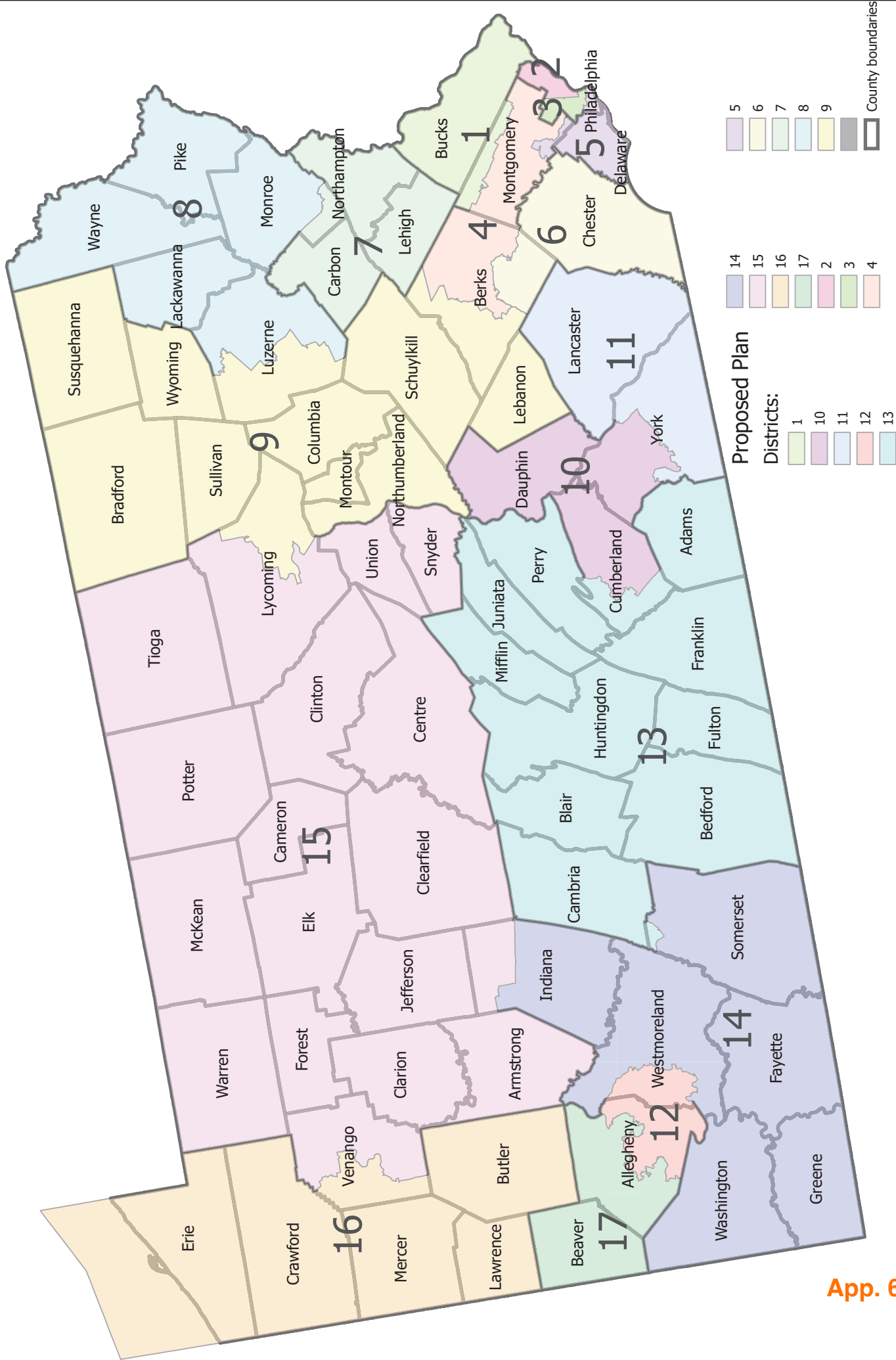
2006-2009: World Bank, Independent Evaluations Group. Undertook evaluations of World Bank decentralization and safety net programs.

2008-2011: International Monetary Fund Institute. Designed and taught course on fiscal federalism.

1998-2003: World Bank, Poverty Reduction and Economic Management Unit. Consultant for *World Development Report*, lecturer for training courses, participant in working group for assembly of decentralization data, director of multi-country study of fiscal discipline in decentralized countries, collaborator on review of subnational adjustment lending.

Last updated: September 23, 2021

Exhibit 2



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 464 M.D. 2021

Carol Ann Carter; Monica Parrilla; Rebecca Poyourow; William Tung; Roseanne Milazzo; Burt Siegel; Susan Cassanelli; Lee Cassanelli; Lynn Wachman; Michael Guttman; Maya Fonkeu; Brady Hill; Mary Ellen Bachunis; Tom DeWall; Stephanie McNulty; and Janet Temin,

Petitioners,

vs.

Leigh Chapman, 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.

No. 465 M.D. 2021

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

Petitioners,

vs.

Leigh Chapman, 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.

**CORRECTED OPENING BRIEF OF HOUSE REPUBLICAN
INTERVENORS KERRY BENNINGHOFF, MAJORITY LEADER, AND
BRYAN CUTLER, SPEAKER, OF THE PENNSYLVANIA HOUSE OF
REPRESENTATIVES IN SUPPORT OF PROPOSED CONGRESSIONAL
REDISTRICTING MAP**

I. INTRODUCTION

The map offered by Intervenors Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives (collectively “Republican House Leaders”), attached as Exhibit 1 to the Affidavit of Bill Schaller, attached as Exhibit I (the “Schaller Affidavit”), was passed through a transparent and full deliberative legislative process by the Pennsylvania House of Representatives (“House Plan”). Intervenors Jake Corman, President Pro Tempore, and Kim Ward, Majority Leader, of the Pennsylvania Senate are submitting the same map on behalf of the Senate. What’s more, the House Plan was drawn by a Pennsylvania citizen and good government advocate – Amanda Holt – who served as the lead plaintiff in the prior litigation over the state’s legislative map. The House made minimal changes to Ms. Holt’s submission to increase the compactness of certain districts and to address other comments received during this open process. But 95% of the map drafted by Ms. Holt remains the same in the House Plan.

Importantly, the House Plan follows traditional redistricting principles, including the criteria in Pa. Const., Art. II, § 16, which, although applicable to legislative reapportionment, have been adopted as important considerations in

congressional redistricting in *League of Women Voters of Pa. v. Commonwealth*, 645 Pa. 1, 120-21 (2018). The House Plan has a population deviation of at most one person, is compact and contiguous, and splits only 15 counties and 16 municipalities—less than or comparable to the current map adopted by the Pennsylvania Supreme Court in 2018. There can be no dispute that the House Plan adheres to these traditional redistricting criteria.

Moreover, the House did not “use partisan data in [its] consideration of submitted maps, in the selection of Ms. Amanda Holt’s citizen’s map, or in [its] adjustments made to the maps through amendment.”¹ Perhaps unsurprisingly, this honest and fair process produced an honest and fair map: one demonstrably fair to both political parties as measured by numerous partisan fairness metrics. Simulation analysis performed by Dr. Michael Barber demonstrates that the House Plan is predicted to result in 9 Democratic seats and 8 Republican seats using an index of statewide elections from 2012-2020, whereas the most likely outcome in the 50,000 simulated maps without using partisan data is 8 Democratic seats and 9 Republican seats. In other words, the House Plan is more favorable to Democrats than the most likely outcome of 50,000 computer drawn maps using no partisan data. Other

¹ Ltr. from Rep. Grove to Gov. Wolf, Jan. 6, 2022, at 5, copy attached as **Exhibit A**, <http://repgrove.com/Display/SiteFiles/418/OtherDocuments/2022/CongressionalRedistrictingResponsetoGovWolf.pdf> (the “Grove Letter”) (last visited Jan. 24, 2022). *See also* Pennsylvania House of Representatives, State Government Committee Meeting, December 15, 2021, at timecode 6:30 (comments of Rep. Grove), at <http://www.pahousegop.com/embed/33680/Voting-meeting-on-HB-2146-and-any-other-business-that-may-come-before-the-committee>.

partisan fairness metrics prove that the House Plan is fair and will allow both parties the opportunity to translate their votes into seats.

It is the General Assembly's prerogative to redraw the state's congressional districts under Article I, § 4 of the United States Constitution and the Pennsylvania Constitution. The Pennsylvania House of Representatives passed a map that meets constitutional criteria and there is still time for the Senate to pass that map and submit it to the Governor before the January 30, 2022 deadline. If, however, the Senate does not pass the map in time, or the Governor vetoes it, the House Plan should be given deference or at least special consideration as it is the only map that truly reflects the will of the people of Pennsylvania. It is the only map that has gone through a transparent and deliberative process by the people's elected representatives.

II. DISCUSSION

A. League of Women Voters of Pa. v. Commonwealth.

In *League of Women Voters of Pa. v. Commonwealth* (“LWV”), the Pennsylvania Supreme Court laid out the framework for evaluating the constitutionality of a congressional redistricting plan under the Pennsylvania Constitution's Free and Equal Elections Clause, Art. I, § 5. 645 Pa. 1 (2018). The Pennsylvania Supreme Court interpreted the Free and Equal Elections Clause to require that “an individual's electoral power not be diminished through any law which discriminatorily dilutes the power of his or her vote...” *LWV*, 645 Pa. at 120.

To help assess that question, the Court relied upon the Article II, Section 16 factors applicable for legislative redistricting:

[g]iven the great concern of the delegates over the practice of gerrymandering occasioned by their recognition of the corrosive effects on our entire democratic process through the deliberate dilution of our citizenry's individual votes, the focus on these neutral factors must be viewed, then, as part of a broader effort by the delegates to that convention to establish 'the best methods of representation to secure a just expression of the popular will.' Consequently, these factors have broader applicability beyond setting standards for the drawing of electoral districts for state legislative office.

Id. at 119 (internal citation omitted). It also found that

the use of compactness, contiguity, and the maintenance of the integrity of the boundaries of political subdivisions maintains the strength of an individual's vote in electing a congressional representative. When an individual is grouped with other members of his or her community in a congressional district for purposes of voting, the commonality of the interests shared with the other voters in the community increases the ability of the individual to elect a congressional representative for the district who reflects his or her personal preferences. This approach inures to no political party's benefit or detriment. It simply achieves the constitutional goal of fair and equal elections for all of our Commonwealth's voters.

Id. at 120-21.

The Court relied upon the Article II, Section 16 criteria as a basis to strike down the 2011 congressional plan, finding that when "it is demonstrated that, in the creation of congressional districts, these neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional redistricting plan violates Article I,

Section 5 of the Pennsylvania Constitution.” *Id.* at 122. This subordination is an effects-based test and does not “require a showing that the creators of congressional districts intentionally subordinated these traditional criteria...” *Id.*

These principles should thus guide this Court in selecting the appropriate congressional plan to govern elections for the next decade.

B. The House Plan Was Passed by the House Following a Transparent and Full Deliberative Process and Is Nearly Identical to the Map Drawn By a Citizen and Good Government Advocate.

In the most open and transparent Congressional redistricting process in recent history, the House State Government Committee held a series of eleven hearings around the Commonwealth from July 22, 2011 to October 28, 2021 to take input from the Commonwealth’s citizens, as well as one joint hearing with the State Senate.² In addition to those hearings, the Pennsylvania State Government Committee Chair established a website with options for citizen input, including input about specific communities of interest as well as the ability to submit maps.³

² See Pennsylvania House Republican Caucus, *Regional Hearings*, copy attached as **Exhibit B**, also available at <http://paredistricting.com/hearingschedule> (last visited Jan. 24, 2022).

³ See Pennsylvania House of Representatives, Republican Caucus, Redistricting Input Site, copy attached as **Exhibit C**, also available at <http://paredistricting.com/input> (last visited Jan. 24, 2022) (providing access to submitted communities of interest, public comments on the 2018 Pennsylvania Supreme Court plan, and publicly submitted maps). See also Pennsylvania House of Representatives, House Republican Caucus, Updated Preliminary Congressional Plan, at https://app.mydistricting.com/legdistricting/pennsylvania/updated_preliminary_map (last visited Jan. 24, 2022) (listing public comments on House Bill 2146); see also 225 Pa. §§ 803(8) and 902(5).

House Bill 2146 was first introduced and referred to State Government Committee on December 8, 2021. The bill introduced, for what might be a first in the history of the Pennsylvania House, a plan proposed by a citizen and good-government advocate, Ms. Amanda Holt, in unaltered form. The State Government Committee selected Ms. Holt’s proposal from among 19 submitted by the public because, as Rep. Seth Grove indicated, it was drawn without political influence, met constitutional standards, limited the splits of townships and other municipalities, and offered districts that were compact and contiguous.⁴ These factors “were highlighted as priorities by the majority of testifiers and residents throughout the committee’s extensive regional hearings and online public input process.”⁵

It was amended into the current form (PN 2541) and reported from the State Government Committee on December 15, 2021. *See Pennsylvania General Assembly, Bill Information – History, House Bill 2146; Regular Session 2021-2022*, attached as **Exhibit E** (the “Bill History”).⁶ After it was released and open for public

⁴ *See* Rep. Seth Grove, *Grove Announces Citizen Map Selected As Preliminary Congressional Plan, Invites Public Comment*, Dec. 8, 2021, copy attached as **Exhibit D**, also available at <http://www.repgrove.com/News/22950/Latest-News/Grove-Announces-Citizen-Map-Selected-as-Preliminary-Congressional-Plan,-Invites-Public-Comment-> (last visited Jan. 24, 2022); *see also* 225 Pa. §§ 803(8) and 902(5).

⁵ *Id.*

⁶ The Court can take judicial notice of official records, 225 Pa. Code § 201(b)(2), and this public record falls within a recognized exception to the hearsay rule, *id.* § 803(8) and 902(5).

comments, a total of 399 comments were received from citizens and numerous changes made based upon those requests.⁷

Although several changes were made, the resulting map was 95% the same as the map originally drawn by Ms. Holt in terms of population and surface area.⁸ Many of the changes that were made were to increase the compactness of specific districts or to address comments received during the process.⁹ In particular, certain changes were made to ensure communities of interest were kept whole and to address inclusion of certain communities within particular congressional districts at the request of citizens.¹⁰

HB 2146 received first consideration on December 15, 2021, but did not receive second consideration until January 11, 2022, i.e., almost a month later. Bill History, Ex. E. *See also* Pa. Const. Art. III, § 4 (“Every bill shall be considered on three different days in each House.”). Under the Rules of the Pennsylvania House of Representatives, second consideration of a bill is the opportunity for any House Member to introduce and offer amendments to a bill. House Rules 21 and 23. While Members had ample to time to draft and file amendments to the bill, no amendment was timely filed to House Bill 2146, Printer’s Number 2541. Bill History, Ex. E. It

⁷ *See* Grove Ltr. at 2, Ex. A.

⁸ *See* Video of Pennsylvania House of Representatives State Government Committee Meeting, December 15, 2021 Hearing, at 7:26, at <https://s3.us-east-2.amazonaws.com/pagopvideo/366117649.mp4>.

⁹ *Id.*; *see also* Grove Ltr. at 3, Ex. A.

¹⁰ *Id.*

received third consideration and final passage in the House on January 12, 2021. *Id.* So, from the time the bill was amended in the House State Government Committee on December 15, 2021, until the bill was passed by the House, the public had 28 days to view the contents of the bill and review the House’s proposed congressional plan.¹¹ In contrast, the preliminary legislative reapportionment plan produced by the Pennsylvania Legislative Reapportionment Commission, which redistricts Pennsylvania’s House and Senate Districts, released its preliminary legislative reapportionment plan on December 13, 2021 and adopted the plan on December 16, 2021, a mere three days later.

HB2146 was referred to the Senate State Government Committee, which passed it on January 12, 2022. *See* Bill History, Ex. E. The Senate gave HB 2146 first consideration on January 18, 2022 and second consideration on January 19, 2022. *Id.* The Senate is scheduled to be in session on January 24, 25, and 26, 2022, and HB 2146 is eligible for third consideration and final passage on any of those dates, or on any future legislative session that may be convened.

¹¹ *See Pennsylvania House of Representatives, House Republican Caucus, Updated Preliminary Plan Page*, copy attached as **Exhibit F**, also available at <http://paredistricting.com/pcplan>. House Bill 2146 was posted immediately to this website and made accessible to the public.

C. It Is the Prerogative of the General Assembly To Perform Congressional Redistricting in the First Instance. To the Extent the House Plan Adheres to Traditional Redistricting Principles, as Enunciated in *LWV v. Commonwealth*, It Should Be Given Special Consideration.

The United States and Pennsylvania Constitutions vest the General Assembly with the authority to redistrict this Commonwealth’s congressional districts. Specifically, Article I, Section 4 of the United States Constitution (the “Elections Clause”) provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof...” Pursuant to the Elections Clause, as a matter of federal law, “redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking.” *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 808 (2015). The Commonwealth’s legislative power is vested in the General Assembly. PA. CONST. ART. II, § 1.

As Petitioners concede (*see* Carter Petition ¶ 36), congressional districting plans are legislative enactments of the General Assembly, passed like any other legislation. The Pennsylvania Supreme Court has confirmed that the “primary responsibility and authority for drawing federal congressional legislative districts rests squarely with the state legislature.” *League of Women Voters v. Com.*, 178 A.3d 737, 821–22 (Pa. 2018), citing *Butcher v. Bloom*, 216 A.2d 457, 458 (Pa. 1966) (identifying the General Assembly as “the organ of government with the primary

responsibility for the task of apportionment”) and *Grove v. Emison*, 507 U.S. 25, 34 (1993) (“the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts”).

All impasse cases necessarily involve scenarios where the legislature and governor are unable to agree on a redistricting plan. But impasse does not mean that the General Assembly’s plan—despite the failure of the Governor to sign it into law—is entitled to no special consideration when the judiciary must take up the unwelcome obligation of redistricting the Commonwealth. After all,

The task of reapportionment is...a function which can be best accomplished by that elected branch of government. The composition of the Legislature, the knowledge which its members from every part of the state bring to its deliberations, its techniques for gathering information, and other factors inherent in the legislative process, make it the most appropriate body for the drawing of [district] lines...

Butcher v. Bloom, 203 A.2d 556, 569 (Pa. 1964). Because of the legislature’s constitutionally protected role to redistrict, the Court should select a map that reflects “the policy choices of the elected representatives of the people, rather than the remedial directive of a federal court.” *Tallahassee Branch of NAACP v. Leon Cty.*, 827 F.2d 1436, 1439 (11th Cir. 1987).

In *Donnelly v. Meskill*, 345 F. Supp. 962 (D. Conn. 1972), for example, the legislature passed a congressional plan that the governor vetoed. When the job of redistricting was thrust upon the court, three plans were submitted, including a plan from the legislature. The court adopted the legislature’s proposed plan and explained

that “[t]he legislative adoption of Public Act 807 tips the scales in favor of the plan in Exhibit B-1, which provides districts essentially as outlined by the legislature, with adjustments necessary to bring about virtually complete population equality.” *Id.* at 965. Recognizing the constitutionally protected role of the legislature in redistricting, the court emphasized that the plan it adopted had “the added advantage that it is basically the plan adopted by the legislature.” *Id.*

Similarly, in *Skolnick v. State Electoral Bd. of Ill.*, 336 F. Supp. 839 (N.D. Ill. 1971), an impasse occurred after a congressional plan had passed the Illinois House but stalled out in the Senate. The court, in fashioning a remedial plan, considered four proposed plans—including one submitted by three U.S. House Representatives that “was, with one minor exception, the same as the one passed by the Illinois House and introduced into the Senate” but not passed. *Id.* at 842. The court selected that plan because it satisfied the required criteria and, in part, because it had received the “approval of one house of the legislature.” *Id.* at 846.

So too, the House Plan here should receive special consideration, notwithstanding any potential Governor veto, because it best reflects state policies and the people’s preferences. “[T]he fundamental principle is that reapportionment is primarily a legislative function and that the courts should defer to the legislative judgment where constitutional and statutory standards have been satisfied.” *In re Ross Twp. Election Dist. Reapportionment*, 489 A.2d 297, 302–03 (1985), *aff’d*, 514

Pa. 41, 522 A.2d 553 (Pa. 1987); *see also Newbold v. Osser*, 230 A.2d 54, 59 (Pa. 1967) (recognizing “the importance of permitting reapportionment by the Legislature wherever possible”).

The House Plan has been submitted by both the legislative leaders of the Pennsylvania House of Representative and the Senate for adoption by this Court so it has support of the General Assembly. The Pennsylvania House of Representatives passed a plan through a full deliberative and transparent process. And there is still time for the Senate to likewise pass the map as it has already received first and second consideration with time for third consideration before the end of the month. The House Plan, which as discussed more fully below, closely adheres to traditional redistricting principles, best reflects the will of the people as it was passed by their elected representatives. None of the other plans Republican House Leaders are aware of have been subjected to this open and democratic process, and one suspects many of the plans submitted by other parties in this case have been drawn behind closed doors without any opportunity for comment. At a minimum, the House Plan should receive special consideration. And given that the plan adheres to traditional redistricting principles as well as the Governor’s stated principles, any ultimate veto by the Governor can be seen only as a partisan political ploy. This Court should adopt the House Plan regardless of whether it is ultimately vetoed by the Governor.

D. The House Plan Was Drawn Without Partisan Data and Consistent with the Traditional Redistricting Criteria in Pa. Const., Art. II, § 16 and this Court’s Decision in *League of Women Voters of Pa. v. Commonwealth*.

The constitutional criteria in Art. II, § 16 of the Pennsylvania Constitution – equal population, contiguity, compactness, and avoiding political subdivisions splits except where absolutely necessary – were held in *LWV* to be appropriate benchmarks in determining whether a congressional districting plan dilutes the votes of Pennsylvania’s citizens. In addition, the Governor’s Redistricting Advisory Council has recognized that federal and state law require compliance with these same elements.¹² The House Plan does exceptionally well on these traditional redistricting factors.

First, the House Plan has a population deviation of +/- one, as good as can be achieved.¹³ Second, the map contains contiguous and compact districts. Indeed, the average Polsby-Popper score for the proposed map is .324, which is very similar to the plan adopted by the Pennsylvania Supreme Court in 2018 which is .327.¹⁴ In

¹² See Pennsylvania Redistricting Advisory Council, Redistricting Principles, attached as **Exhibit G**; also available at: <https://www.governor.pa.gov/congressional-districts-map-proposals/#fair-maps> (last visited Jan. 24, 2022).

¹³ See Exhibit I, Schaller Aff., at Ex. 2, p. 1 (Report of Legislative Data Processing Center on H.B. 2146).

¹⁴ See Remedial Plan Compactness Report available at: https://www.pacourts.us/Storage/media/pdfs/manual_uploads/file-6844.zip?cb=c50222 (last visited Jan. 24, 2022). See also Exhibit I, Schaller Aff., at Ex. 3 (Report of Compactness Scores for H.B. 2146).

other words, the House Plan is as compact as a map that the Pennsylvania Supreme Court previously adopted.

Finally, the House Plan splits only 15 counties with 18 total splits.¹⁵ This is very similar to the current plan adopted by the Pennsylvania Supreme Court in 2018 that splits 14¹⁶ counties 19 times. It likewise splits fewer municipalities than the current map. The proposed map splits only 16 municipalities with a total of only 18 splits.¹⁷ The current map adopted in 2018, however, splits 18 municipalities a total of 19 times.¹⁸ A certain number of municipal splits are necessary to reach population equality. Thus, it is not only important to examine the total splits, but which municipalities are split.

Philadelphia is the only municipality in the Commonwealth that is larger than the population of a single congressional district. Thus, it must be split into two districts. The remainder of municipalities split in the House Plan are small in population. *See* Report of Michael (“Barber Rep.”) at 16, attached as **Exhibit H**.

¹⁵ *See* Exhibit I, Schaller Aff., at Ex. 2 (Report of Legislative Data Processing Center on H.B. 2146, “Counties Split by Congressional Districts”).

¹⁶ *See* Remedial Plan Split Report, available at:

https://www.pacourts.us/Storage/media/pdfs/manual_uploads/file-6844.zip?cb=c50222 (last visited Jan. 24, 2022). In *LWV*, the Pennsylvania Supreme Court recognized that the number of counties split was only 13 because “[a]n additional county split may appear in some GIS program calculations, but that is due to the fact that a non-contiguous Chester County census block with zero population is located inside Delaware County. That census block and its adjoining water is appropriately placed inside the district that contains Delaware County.” 181 A.3d 1083, 1087 n. 10 (2018).

¹⁷ *See* Exhibit I, Schaller Aff., at Ex. 2 (Legislative Processing Data Center Report, “Places Split By Congressional Districts”).

¹⁸ *See id.*

These splits were necessary to reach population equality and have minimal, to zero, impact on the likely partisan outcomes of the map. *See also* Ex. I, Schaller Aff. at Ex. 4, Precinct Split Reports for H.B. 2146 (reflecting precinct population splits).

Additionally, although not a stated goal of HB2146, following traditional redistricting criteria also resulted in the creation of two districts with a minority voting age population greater than 50% including one with a Black voting age population over 50%. Barber Rep. at 35, Table 2.

E. Although Not a Requirement of the Constitution, the House Plan is Demonstrably Fair Under Numerous Partisan Fairness Measures.

In *League of Women Voters*, the Pennsylvania Supreme Court held that “when . . . it is demonstrated that, in the creation of congressional districts, these neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional redistricting plan violates Article I, Section 5 of the Pennsylvania Constitution.” 645 Pa. at 122. As demonstrated above, the House Plan adheres to traditional redistricting criteria. But as demonstrated further below, it also does not give any unfair political advantage to any party. To the contrary, the House Plan is fair and gives both major political parties an opportunity to translate their votes into seats.

One way to evaluate the partisan fairness of a map is by comparing it to a set of simulated maps that follow only traditional redistricting criteria. This set of simulated districts is helpful because it provides a set of maps to which one can

compare the proposed map that also accounts for the geographic distribution of voters in the state. Because voters are not distributed evenly across Pennsylvania, one cannot evaluate the fairness of a proposed plan without an apples-to-apples comparison. In other words, if a plan is not evaluated against a non-partisan set of maps, then potential issues or red flags in the map may not at all be due to partisan gerrymandering, but rather the geographic distribution of voters in the state. Barber Rep. at 11. This process has been recognized in a variety of redistricting cases including in Pennsylvania. Barber Rep. at 11-12.

Dr. Michael Barber – Associate Professor of Political Science at Brigham Young University – prepared a set of 50,000 simulated maps using only the traditional redistricting criteria of equal population, compactness, contiguity, and minimizing political subdivision splits. Barber Rep. at 13-14. Dr. Barber’s results demonstrate that the House Plan follows these traditional redistricting criteria similar to that of the simulated plans. Barber Rep. at 16, Table 1. Moreover, his analysis demonstrates that, if anything, the House Plan is more favorable to Democrats.

The proposed plan is predicted to result in 9 Democratic-leaning seats and 8 Republican-leaning seats using an index of statewide elections from 2012 to 2020. Barber Rep. at 23, Figure 3. That result occurs in 32.1% of the 50,000 simulated plans. *Id.* The most common outcome, however, is 9 Republican-leaning seats and 8 Democratic-leaning seats, occurring in 34.9% of the 50,000 simulated maps. *Id.*

In other words, using that index of elections, the House Plan is predicted to result in an additional Democratic-leaning seat than the most common outcome in the 50,000 plans simulated created without use of any partisan data. As Dr. Barber concludes:

Recall that in using the simulations we are comparing the proposed map to a set of maps drawn by the computer using only those criteria that I instructed the algorithm to follow - namely the pre-specified nonpartisan criteria of equal population, contiguity, geographic compactness and a preference for fewer county splits. Both the HB2146 plan and the simulations account for the unique political geography of Pennsylvania. Doing so shows us that the HB2146 plan is within the middle portion of simulation results and if anything leans slightly towards the Democratic party by generating 9 Democratic-leaning districts rather than 8, which is the modal outcome in the simulations. By no standard definition would the plan be considered an outlier.

Barber Rep. at 22 (emphasis added). However, using a partisan index of 2014-2020 statewide elections, the House Plan is predicted to result in 8 Democratic-leaning seats and 9 Republican-leaning seats, showing how the House Plan is fair and can flip seats depending on different election outcomes. Barber Rep. at 44 (App'x A).

Dr. Barber also analyzed the House Plan under various other partisan fairness metrics commonly utilized by political scientists to test the partisan fairness of a districting map. The downside with many of these metrics, however, is that they do not take into account the political geography of the state. Barber Rep. at 28, 31. Yet, they still all demonstrate that the House Plan is fair.

Dr. Barber calculates that the House Plan has a mean-median of $-.015$, which is very close to zero. Barber Rep. at 27-28 & Figure 5. “The median-mean measure

is calculated by taking the median value (the value for which half of the observations are smaller and half the observations are larger) of the partisan index across all 17 districts in a plan and subtracting from that the mean (the simple average) from the median.” Barber Rep. at 27. Dr. Barber concludes that

First, without comparing to the simulations, the HB2146 plan is very nearly unbiased. The median-mean value for the HB2146 plan is $-.015$, which is very close to zero. In other words, the median district and the mean district in the HB2146 plan are different by less than two percentage points. Second, when comparing the HB2146 plan to the simulations, the HB2146 plan is more favorable to Democratic voters than the vast majority of the simulated districting plans. The HB2146 plan has a median-mean value that is smaller (in absolute value) than 85 percent of the simulated plans. In other words, using only the non-partisan criteria described above to draw the simulated districts, 85% of them generate districts with a greater median-mean value, indicating a less efficient distribution of Democratic voters than the HB2146 plan contains.

Barber Rep. at 28.

Dr. Barber likewise calculates an efficiency gap for the House Plan. The efficiency gap “looks for the degree to which a party’s votes statewide are translated into seats in each district.” Barber Rep. at 28-29. It analyzes how the parties are wasting votes with any vote for a losing candidate and any vote above 50%+1 considered wasted. Barber Rep. at 29-30. Dr. Barber calculates the efficiency gap for the House Plan is $-.02$, which is also very close to zero. Barber Rep. at 31. But even more telling, the efficiency gap for the House Plan is more favorable to Democratic voters than the majority of the simulated districting plans. Barber Rep.

at 31-32, Figure 6. It is, in fact, smaller than all other outcomes in the simulated plans. Barber Rep. at 32. This demonstrates that the House Plan eliminates at least some of the natural geographic advantage of Republican voters.

Dr. Barber also performs a uniform swing analysis, which considers how a plan performs under a variety of different electoral environments by randomly adding certain percentages from previous elections uniformly to each district in the plan. Barber Rep. at 33-34. Like the other metrics, Dr. Barber's uniform swing analysis demonstrates that the House Plan is fair. The House Plan is nearly exactly in the middle of the distribution, meaning roughly half of the simulations are worse for Democrats and nearly half are better. Barber Rep. at 34, Figure 7.

In addition, and although not a requirement, the House Plan creates a number of competitive districts. Barber Rep. at 18. Based upon the same set of elections from 2012-2020, Dr. Barber concludes that six of the districts in the House Plan will be competitive – over one-third – with five of them having a partisan index between .48 and .52. Barber Rep. at 21, Figure 2. And, of these competitive districts, four of them lean Democratic. Barber Rep. at 19.

By any number of different metrics, the House Plan is demonstrably fair to both political parties. If anything, the House Plan does much to negate the natural geographic disadvantage faced by Democratic voters being packed in urban cities, and is predicted to result in more Democratic seats than the most common outcome

in the 50,000 simulated plans. By several metrics, it has also been shown that the plan fairly allows the political parties to each translate their votes into seats and creates numerous competitive districts.

In 2018, the Pennsylvania Supreme Court adopted a map that was predicted to result in 9 Republican-leaning seats and 9 Democratic-leaning seats. Indeed, that was the outcome following the 2020 election. Pennsylvania is losing one congressional seat following the 2020 Census. Yet, the House Plan is predicted to result in 9 Democratic-leaning seats and 8 Republican-leaning seats. Barber Rep. at 23, Figure 3. Any claim that the House Plan was drawn to somehow benefit Republican voters and candidates belies common sense.

Finally, although Dr. Barber's simulations were drawn without consideration of racial data, his core finding is robust even when the House Plan is compared to "race conscious" simulations under two scenarios. First, Dr. Barber examined the 1,852 simulated plans from his race-blind sample that likewise created two majority-minority districts including one majority Black district. Barber Rep. at 35-36. Second, Dr. Barber also generated another set of 5,000 simulated race conscious maps where he instructed the model to ensure that every simulated plan had at least three districts that have at least 35% non-white voting age population. Barber Rep. at 36. Dr. Barber's analysis reflects that even when using "race conscious" simulations, a map with 9 Democratic-leaning seats—the same as the House Plan—

remains the most common outcome, occurring in 70.6% of the simulations. Barber Rep. at 37-38, Figure 8.

F. This Court Should Reject Maps That Subordinate Traditional Redistricting Criteria in Favor of a Map That Seeks Proportional Representation.

In *LWV*, the Pennsylvania Supreme Court explained:

We recognize that other factors have historically played a role in the drawing of legislative districts... However, we view these factors to be wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts. These neutral criteria provide a “floor” of protection for an individual against the dilution of his or her vote in the creation of such districts.

When, however, it is demonstrated that, in the creation of congressional districts, these neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional redistricting plan violates Article I, Section 5 of the Pennsylvania Constitution.

645 Pa. at 122. Moreover, in analyzing the constitutional criteria for legislative redistricting in Article II, Section 16, the Pennsylvania Supreme Court has stated that “[t]he constitutional reapportionment scheme does not impose a requirement of balancing the representation of the political parties; it does not protect the ‘integrity’ of any party’s political expectations. Rather, the construct speaks of the ‘integrity’ of political subdivisions, which bespeaks history and geography, not party affiliation or expectations.” *Holt v. 2011 Legislative Reapportionment Commission*, 620 Pa. 373, 413-14 (2013).

The Pennsylvania State Government Committee, and the House Republican Caucus, did not use partisan data in consideration of submitted maps, in the selection of Ms. Amanda Holt’s citizen’s map, or in our adjustments made to the map through amendment. Instead, it focused on traditional redistricting criteria which, as acknowledged by the Court, provide protection against the dilution of votes. The Pennsylvania Supreme Court was very clear: the neutral criteria explicitly provided for by the Pennsylvania Constitution cannot be subordinated to partisan concerns or considerations.

But, a map prioritizing the neutral criteria found in the Pennsylvania Constitution – equal population, compactness and the avoidance of county, municipal, and ward splits unless absolutely necessary – may not result in a proportional congressional delegation due to the spatial dispersion of the political groups throughout the state. That is a fundamental reality of Pennsylvania’s current political geography. According to Dave Wasserman, among the foremost nonpartisan redistricting experts in the country, developing a congressional map that provides proportional election outcomes, in Pennsylvania at least, “requires conscious pro-Dem[ocrat] mapping choices.”¹⁹ Even the *LWW* opinion acknowledged, when discussing the expert testimony presented by Petitioners’

¹⁹ See <https://twitter.com/redistrict/status/965719652188991488>.

expert (Dr. Warshaw), that “historically Democratic voters tend to self-sort into metropolitan areas.” *LWV*, 645 Pa. at 127.

Like many states, Democratic voters in Pennsylvania are clustered in cities and urban areas while Republican voters are more evenly distributed in rural areas. Thus, Democratic voters tend to be more inefficiently packed into homogeneous districts. Political science scholars have thus recognized that to overcome this natural geographic disadvantage “Democrats would need a redistricting process that intentionally carved up large cities like pizza slices or spokes of a wheel, so as to combine some very Democratic urban neighborhoods with some Republican exurbs in an effort to spread Democrats more efficiently across districts.”²⁰ The decision in *LWV*, however, does not allow for such division of cities for political gain in subordination of the traditional redistricting criteria of preserving the lines of political subdivisions.

Thus, any map that prioritizes proportional election outcomes, such as negating a natural geographic disadvantage to achieve proportionality, at the expense of traditional redistricting criteria violates the Pennsylvania Constitution’s Free and Equal Elections Clause. Additionally, the U.S. Supreme Court in *Vieth v. Jubelirer*, a case originating in Pennsylvania, stated that “[t]he Constitution provides

²⁰ Barber Rep. at 10 (quoting Jonathan A. Rodden, *Why Cities Lose: The Deep Roots Of The Urban-Rural Political Divide* 155 (Basic Books 2019)).

no right to proportional representation.” 541 U.S. 267, syllabus ¶ 3 (2004). “It guarantees equal protection of the law to persons, not equal representation . . . to equivalently sized groups. It nowhere says that farmers or urban dwellers, Christian fundamentalists or Jews, Republicans or Democrats, must be accorded political strength proportionate to their numbers.” *Id.* at 288.

Proportionality is neither a requirement nor a goal of redistricting under federal or state law; in fact, the very nature and design of our representative democracy is in many ways at odds with the pursuit of proportionality. This conflict is heightened by Pennsylvania’s constitutional requirement that districts be compact and must avoid county, municipal, and ward splits unless absolutely necessary. Thus, any plan that seeks to achieve proportionality at the expense of traditional redistricting factors should be disregarded.

III. CONCLUSION

For the foregoing reasons, the Republican House Leaders respectfully request that the Court adopt the House Plan, which was passed by the Pennsylvania House of Representatives following a full transparent and deliberative process and therefore reflects the will of the people, complies with traditional redistricting criteria, and has been demonstrated to be fair based upon any number of different metrics.

Dated: January 24, 2022

Respectfully submitted,

/s/ Jeffry Duffy

BAKER & HOSTETLER, LLP

Jeffry Duffy (PA No. 081670)

BNY Mellon Center

1735 Market Street, Suite 3300

Philadelphia, PA 19103

(215) 568-3100 / Fax (215) 568-3439

jduffy@bakerlaw.com

Patrick T. Lewis (OH No. 0078314)*

127 Public Square, Suite 2000

Cleveland, OH 44114

(216) 621-0200 / Fax (216) 696-0740

plewis@bakerlaw.com

Robert J. Tucker (OH No. 0082205)*

200 Civic Center Drive, Suite 1200

Columbus, OH 43215

(614) 462-2680 / Fax (614) 462-2616

rtucker@bakerlaw.com

James G. Mann (PA 85810)

jmann@pahousegop.com

Pennsylvania House of Representatives

Republican Caucus

Main Capitol Building, Suite B-6

P.O. Box 202228

Harrisburg, PA 17120-2228

Telephone: 717.783.1510

** Admitted Pro Hac Vice*

Counsel for Proposed Intervenors Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives

EXHIBIT A

HONORABLE
SETH M. GROVE
196TH LEGISLATIVE DISTRICT

HARRISBURG OFFICE

7 EAST WING
P.O. BOX 202196
HARRISBURG, PA 17120-2196
PHONE: (717) 783-2655

DISTRICT OFFICE

2501 CATHERINE STREET
SUITE 10
YORK, PA 17408
PHONE: (717) 767-3947

Website: RepGrove.com
Twitter: @RepGrove
Facebook.com/RepSethGrove



House of Representatives

Commonwealth of Pennsylvania

January 6, 2022

CHAIR
STATE GOVERNMENT COMMITTEE

COMMITTEES
REPUBLICAN POLICY COMMITTEE

LEGISLATIVE APPOINTMENTS
STATE PLANNING BOARD
YAMPO

The Honorable Tom Wolf
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Wolf,

While I am disappointed you have declined my offer to publicly discuss the congressional districts proposed by HB 2146, P.N. 2541 or the Updated Preliminary Citizens' Congressional Redistricting Map, I wanted to address some serious fallacies in your letter to Speaker Culter and Leader Benninghoff. Further, I wanted to ensure you had factual information presented to you from the prime sponsor of the legislation, which I hope you will read prior to making any decisions. We both agree misinformation and disinformation are dangerous and the people of Pennsylvania deserve to know the truth. I think we can also agree that developing congressional maps is a constitutional mandate placed on the General Assembly and the Governor through legislative duties granted by our state and federal constitutions. Whether you decide to actively participate in the legislative process or to sit on the bench is wholly your decision. But if your goal is for the courts to draw the maps, then you are failing the people of Pennsylvania, your constitutional obligations, and treating the independent judiciary as your personal attorneys for hire.

Myth: The districts have a deviation of 9,000 people between the largest and smallest district, and this discrepancy may be successfully challenged as unconstitutional.

Fact: Fair Districts Pennsylvania¹ loaded the districts created by the Updated Preliminary Citizens' Congressional Redistricting Map to DavesRedistricting.org website^{2 3}. Here is their breakdown of population by district, when using the data set of total population provided by the 2020 Census:

¹ [Preliminary Maps: Review and Offer Comment | Fair Districts PA](#)

² [DRA 2020 \(davesredistricting.org\)](#)

³ [Comments | MyDistricting](#)

District 1	764,865	District 10	764,865
District 2	764,865	District 11	764,865
District 3	764,865	District 12	764,865
District 4	764,865	District 13	764,864
District 5	764,865	District 14	764,865
District 6	764,865	District 15	764,864
District 7	764,864	District 16	764,865
District 8	764,864	District 17	764,865
District 9	764,864		

I can only imagine your claim has been based on an analysis of the bill using the adjusted data set approved by the Legislative Reapportionment Commission for the drawing of General Assembly maps. If that data set is applied to the plan proposed by the Updated Preliminary Citizens' Congressional Redistricting Map, it would result in the nearly 9,000 person 'deviation' you claim.

However, this 'deviation' certainly could not give rise to a claim of unconstitutionality. It has always been the practice of Pennsylvania, as well as nearly every other state, to count prisoners where they reside and where they are counted by the Census. Despite recent changes in some states, it remains obvious that states may continue to constitutionally reapportion districts on the basis of the total population numbers provided by the Census. And in fact, the vast majority of states are continuing to do so.

The unadjusted Census figures provide the data set used by Ms. Amanda Holt in designing her citizen's map, as well as the data set used in making the various improvements enacted through amendment. According to the actual Census numbers, population deviation is zeroed out.

You may wish for the map to use the adjusted data set and you may even decide using an adjusted data set is a litmus test for your approval of a Congressional mapping plan. Those discussions would be a natural part of any dialogue and negotiation between the General Assembly and your office on the basis for an agreed-upon map. That is, if you are willing to engage in any type of honest dialogue.

But you cannot and should not be dishonest with the people of Pennsylvania by claiming that the citizen's map advanced within the Updated Preliminary Citizens' Congressional Redistricting Map contains an unconstitutional population deviation. If anything, it is the constitutionality of adjusted population schemes like the one approved by the Legislative Reapportionment Commission that are more novel, and that present legal and constitutional questions still to be resolved by the courts.

Myth: "When Republican members of the House State Government Committee objected to aspects of the map submitted by Ms. Amanda Holt, Chairman Grove quickly abandoned the pretext of a citizen-selected map and redrew lines in ways that completely undermine the principles that motivated Ms. Amanda Holt's map in the first place. The result is a highly skewed map."

Fact: After the Preliminary Citizens' Congressional Redistricting Map was originally released, it was open for public comment on PaRedistricting.com⁴. There were 399 total comments submitted by citizens. The amendment in committee made changes based on requests by citizens or to increase compactness.:

⁴ [Comments | MyDistricting](#)

Here are the specific changes:

- District 3 went from 49% African American Voting Age Population to 52.49%. In compliance with traditional redistricting principles, precincts were shifted between District 3 and District 2.
- District 5 was adjusted to increase compactness and we received numerous public comments from Williston Township residents requesting to be part of District 6, so while we increased the compactness of District 5, we also moved Williston Township into District 6.
- Districts 6, 10, 11, & 13 were all adjusted to increase compactness. Further, residents of the Camp Hill area filed numerous public comments requesting to be connected with the Capitol region.
- The “left-hand pinky” in District 10 was eliminated to increase compactness.
- District 9 was adjusted to increase compactness, to ensure the Susquehanna River communities were whole, and to eliminate the “zipper” in Potter County.
- District 7 was shifted back into Monroe County to increase compactness and align new boundaries with the current map developed by the PA Supreme Court.
- District 8 was adjusted to increase compactness.
- District 12 was adjusted to increase compactness, notably the zippers in Butler County were eliminated.
- District 17 was adjusted after receiving citizen feedback on Washington Borough not being in District 17. District 17 and District 14 were adjusted to meet constitutional population requirements.

I specifically addressed these changes at the House State Government Committee voting meeting on Wednesday, December 15. I do not know why your staff did not provide you this information or reach out to me to request this information.

During the committee vote on the Updated Preliminary Citizens’ Congressional Redistricting Map, I addressed how the amendment makes overall adjustments to the original map submitted by Ms. Amanda Holt⁵. In both population and land area, the current map is **95%** the same as the original map.^{6 7} Here are tables for your review on comparing the two maps:

⁵ <http://www.paredistricting.com/Video/Redistricting>

⁶ [Preliminary Plan and Updated Plan Comparison by Population.xlsx \(paredistricting.com\)](#)

⁷ [Preliminary Plan and Updated Plan Compactness Comparison.pdf \(paredistricting.com\)](#)

Compactness Comparison									
Citizen's Map Submission				Updated Map - Amendment A03209				Square Miles % Change Between Citizen's Map Submission & Updated Amendment	
District	Square Miles	Polsby-Popper	Reock	District	Square Miles	Polsby-Popper	Reock		
1	713	0.39	0.4	1	713	0.39	0.4	100%	
2	65	0.25	0.32	2	65	0.22	0.3	100%	
3	56	0.25	0.37	3	56	0.23	0.37	100%	
4	399	0.25	0.36	4	399	0.25	0.36	100%	
5	499	0.15	0.21	5	339	0.25	0.34	68%	
6	1,139	0.12	0.26	6	1,246	0.19	0.38	91%	
7	1,038	0.36	0.34	7	1,071	0.37	0.4	97%	
8	5,071	0.36	0.42	8	4,979	0.35	0.41	98%	
9	7,304	0.28	0.38	9	6,984	0.3	0.33	96%	
10	1,825	0.43	0.38	10	1,557	0.44	0.44	85%	
11	1,514	0.21	0.35	11	1,455	0.49	0.49	96%	
12	9,977	0.23	0.57	12	10,301	0.42	0.62	97%	
13	4,932	0.23	0.4	13	5,350	0.29	0.43	92%	
14	5,085	0.24	0.38	14	5,051	0.24	0.38	99%	
15	308	0.29	0.58	15	308	0.29	0.58	100%	
16	4,877	0.4	0.37	16	4,896	0.49	0.38	100%	
17	1,249	0.23	0.44	17	1,284	0.24	0.45	97%	
Citizen's Map Submission								Average	95%
Average Compactness Polsby-Popper : 0.27									
Average Compactness Reock: 0.38									
Updated Map - Amendment A03209									
Average Compactness Polsby-Popper : 0.32									
Average Compactness Reock: 0.42									

Difference between Preliminary Map and Updated Preliminary Map by Population			
District	Final Population	Unchanged Population	Preliminary Districts
			that Remains Unchanged
1	764,865	764,865	100.00%
2	764,865	727,974	95.18%
3	764,865	727,974	95.18%
4	764,865	764,865	100.00%
5	764,865	665,110	86.96%
6	764,865	664,660	86.90%
7	764,864	744,414	97.33%
8	764,864	745,298	97.44%
9	764,864	710,269	92.86%
10	764,865	685,726	89.65%
11	764,865	745,299	97.44%
12	764,865	720,103	94.15%
13	764,864	642,606	84.02%
14	764,865	741,290	96.92%
15	764,864	764,864	100.00%
16	764,865	755,133	98.73%
17	764,865	741,290	96.92%
		Average Same	95%

Split Analysis from LDPC					
County		Municipal		Voting Precinct	
Original	Update	Original	Update	Original	Update
14 County Splits	15 County Splits	16 Municipalities Split	18 Municipalities Split	11 Precincts Split	19 Precincts Split
16 Total Splits	18 Total Splits	18 Total Splits	18 Total Splits	11 Total Splits	19 Total Splits

As you can see, the Updated Preliminary Citizens’ Congressional Redistricting Map is based upon the same pretext and principles as Ms. Amanda Holt’s original map. Further, I would urge you to actually watch the Informational Meeting the House State Government Committee held on Thursday, December 9 with Ms. Amanda Holt: <https://s3.us-east-2.amazonaws.com/pagopvideo/946333055.mp4>. Again, I do not know why your staff did not provide you this information or reach out to me for this information.

Myth: “. . . the council also recommended that I review proposed maps to determine whether their expected performance is proportional to statewide voter preference. The HB 2146 map falls short on this basic measure of partisan fairness.”

Fact: In *League of Women Voters of Pennsylvania et. al. vs. the Commonwealth of Pennsylvania (2018)*, the Pennsylvania Supreme Court gave specific criteria for the development of redistricting maps.⁸ Specifically, the court explained:

“We recognize that other factors have historically played a role in the drawing of legislative districts... However, we view these factors to be wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts. These neutral criteria provide a “floor” of protection for an individual against the dilution of his or her vote in the creation of such districts.

When, however, it is demonstrated that, in the creation of congressional districts, these neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional redistricting plan violates Article I, Section 5 of the Pennsylvania Constitution.”

The Pennsylvania State Government Committee, and the House Republican Caucus, did not use partisan data in our consideration of submitted maps, in the selection of Ms. Amanda Holt’s citizen’s map, or in our adjustments made to the map through amendment.

Instead, we focused on traditional redistricting criteria which, as acknowledged by the Court, provide protection against the dilution of votes. The Pennsylvania Supreme Court was very clear: the neutral criteria explicitly provided for by the Pennsylvania Constitution cannot be subordinated to partisan concerns or considerations. By demanding a map that is likely to result in a Congressional delegation proportional to some theoretical statewide vote of each party, you are essentially asking us to violate the Constitution as it was interpreted by *League of Women Voters*.

A map prioritizing the neutral criteria found in the Pennsylvania Constitution- compactness and the avoidance of county, municipal, and ward splits unless ‘absolutely necessary,’ will not, at this time, likely result in a proportional congressional delegation. That is a fundamental reality of Pennsylvania’s current political geography. According to Dave Wasserman, among the foremost nonpartisan redistricting experts in the country, developing a congressional map that provides

⁸ [194537-feb.19.2018-opinionandorderadoptingremedialplan.pdf \(pacourts.us\)](https://www.pacourts.us/files/2018/02/194537-feb.19.2018-opinionandorderadoptingremedialplan.pdf)

proportional election outcomes, in Pennsylvania at least, “requires conscious pro-Dem[ocrat] mapping choices⁹.”

By demanding a map that provides proportional outcomes, you are demanding that we violate the Pennsylvania Constitution in developing any map that would be acceptable to you- by ignoring the neutral and explicit criteria found in Article II of the PA Constitution and elevating partisan data, and pro-Democratic mapping choices, above the prioritization of Pennsylvanians’ communities and daily lives.

Additionally, the U.S. Supreme Court in *Vieth v. Jubelirer*, 541 U.S. 267, a case originating in Pennsylvania, already addressed concerns regarding proportionality:

“The Constitution provides no right to proportional representation . . . It guarantees equal protection of the law to persons, not equal representation . . . to equivalently sized groups. It nowhere says that farmers or urban dwellers, Christian fundamentalists or Jews, Republicans or Democrats, must be accorded political strength proportionate to their numbers.”

Proportionality is neither a requirement nor a goal of redistricting under federal or state law; in fact, the very nature and design of our representative democracy is in many ways at odds with the pursuit of proportionality. This conflict is heightened by Pennsylvania’s constitutional requirement that districts be compact and must avoid county, municipal, and ward splits **unless absolutely necessary**. Even the *League of Women Voters* opinion acknowledged, when discussing the expert testimony presented by Petitioners’ expert (Dr. Warshaw), that “historically Democratic voters tend to self-sort into metropolitan areas.” Where the natural political geography of the Commonwealth puts the two in conflict, the pursuit of proportionality cannot prevail over neutral constitutional mandates.

You, as Governor, have constitutional legislative powers and are involved in the mapmaking process. Whether you engage in this process is your decision, but you are constitutionally bound with the General Assembly to administer your powers on an equal basis. Neither the Governor nor the General Assembly can ignore these specific directions by the Pennsylvania Supreme Court to ensure that those involved in the constitutional legislation process adopt acceptable maps.

I would further point out the hypocrisy of demanding proportionality in the name of ‘fairness.’ In 2018, the political data site *Fivethirtyeight* conducted a redistricting analytics project that it referred to as *The Atlas of Redistricting*.¹⁰ This analysis makes clear that, based on Pennsylvania’s recent political geography, a map drawn to pursue proportionality is no different than a map drawn to be the best possible gerrymander to advance Democratic political interests. I encourage you or any Pennsylvanian who has concerns regarding the redistricting process to access this site and see the evidence for themselves.

We have a duty to be honest with the people of Pennsylvania. It is dishonest to claim that our map does not meet your criteria for fairness, when in fact you have established criteria that can only be pursued through an unconstitutional map-making process.

⁹ <https://twitter.com/redistrict/status/965719652188991488>

¹⁰ <https://projects.fivethirtyeight.com/redistricting-maps/pennsylvania/>

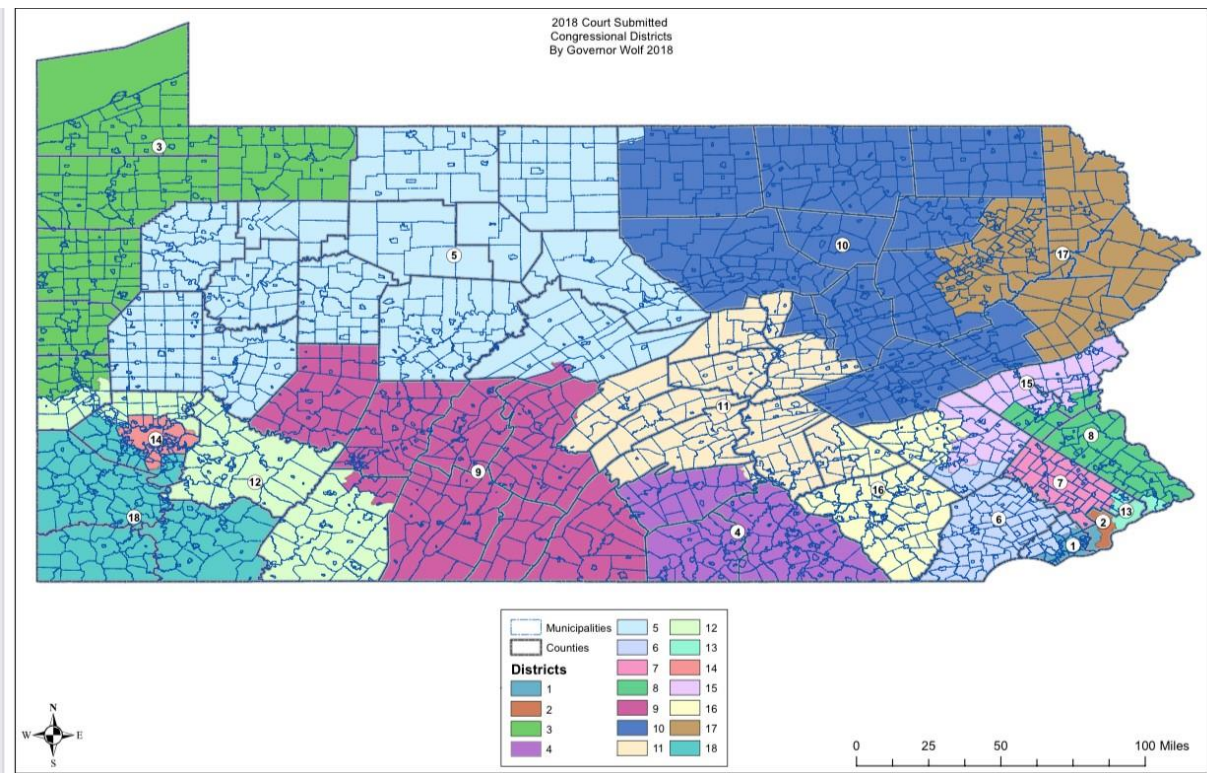
It is even more dishonest to claim that a map may only be ‘fair’ if it has been drawn to neglect the constitutionally required, apolitical criteria of compactness and the preservation of local communities, and instead to pursue a thinly veiled Democratic gerrymander.

That is what the prioritization of proportionality entails: partisan gerrymandering. If you do not want to participate in partisan gerrymandering, then do not base your decisions on partisan data, and certainly do not subordinate the neutral criteria found in Pennsylvania’s Constitution to those partisan concerns. The House Republican Caucus is not doing so, and you should join us in avoiding these mistakes.

Myth: “. . . the revised map splits multiple communities of interest, including splits in Luzerne, Dauphin, Philadelphia, and Chester counties that do not appear to be motivated by compelling legal principles, but rather by a desire to make districts more favorable to Republican Candidates.”

Fact: Neither the House State Government Committee nor the House Republican Caucus have used political data in any portion of developing the Updated Preliminary Citizens’ Congressional Redistricting Map. It is our understanding that this also applies to Ms. Amanda Holt and her development of her original map. The House State Government Committee and the House Republican Caucus will not be involved in any map or development of a map which are in violation of the established principles laid in any court case, the U.S. and Pennsylvania Constitutions, and federal and state laws.

In 2018, you submitted a map to the Pennsylvania Supreme Court.¹¹ Three years later, not only do you not want to participate in the legislative process, but you are also going out of your way to claim that your only recourse is a veto.



¹¹ [League of Women Voters, et al. v. the Commonwealth of Pennsylvania, et al. – 159 MM 2017 | Cases of Public Interest | News & Statistics | Unified Judicial System of Pennsylvania \(pacourts.us\)](#)

Gov. Wolf Map County Split Analysis	
Allegheny County – 2	Lehigh County – 2
Beaver County – 2	Luzerne County – 2
Berks County – 3	Mifflin County – 2
Bucks County – 2	Montgomery County – 3
Centre County – 2	Northampton County – 2
Cumberland County – 2	Philadelphia City – 3
Delaware County – 2	Somerset County – 2
Lebanon County - 2	Tioga County – 2
16 Counties Split 35 Times	

The Updated Preliminary Citizens’ Congressional Redistricting Map has a total of 15 counties split with 18 total splits and only one county is split three times, where your 2018 map has three counties split three times. Further, under the Updated Preliminary Citizens’ Congressional Redistricting Map, Philadelphia City is only split twice unlike your 2018 proposed congressional redistricting map. I fail to see how in 2021 you have issues with the county splits contained in the Updated Preliminary Citizens’ Congressional Redistricting Map, when there are fewer splits than in your proposed 2018 congressional redistricting map. Even more puzzling, two of the counties you are questioning, Luzerne County and City of Philadelphia, were also split in your proposed map.

Myth: “. . . the manner in which Chairman Grove has conducted the recent steps of the crucial process has been disgraceful. Despite his promise to conduct the “most open and transparent congressional redistricting process in PA history,” it is not clear that he consulted with even the Republican members of his own Committee prior to selecting the Ms. Amanda Holt map – much less the Democratic members, who have been completely cut out of the process. And despite Chairman Grove’s attempt make up a narrative as he goes, there is no explanation for the changes that were made beyond the fact that some of them seem to correlate with complaints aired by members of his Committee when the original map was released.”

Fact: If you or your staff took the time to engage in the process, you would find we did institute the most open and transparent congressional redistricting process in the history of the commonwealth. As a matter of fact, it has been so good, you copied it.¹³

The Center Square

TOP STORY

Pennsylvania governor launches familiar public congressional redistricting effort

Gov. Tom Wolf Commonwealth Media Services

By Christen Smith | The Center Square
Sep 13, 2021

(The Center Square) – Pennsylvania Gov. Tom Wolf launched a website on Monday to collect public input about the state’s new congressional district map in an effort that resembles House Republicans’ own **strategy** for redrawing the boundaries.

¹² [md-report.pdf \(pa.gov\)](#)

¹³ https://www.thecentersquare.com/pennsylvania/pennsylvania-governor-launches-familiar-public-congressional-redistricting-effort/article_3e9deb4e-14dd-11ec-af4e-8310de694fa1.html

If you or your staff want any information on the House redistricting process, just go to www.PaRedistricting.com. It has all the testimony received from our hearings, citizen drawn communities of interest, public comment, all the verified citizens drawn maps, all the pertinent information on the preliminary map including the testimony from Ms. Amanda Holt, and the voting meeting of the Updated Preliminary Citizens' Congressional Redistricting Map, during which I went into specific detail on the amendment to HB 2146. House Democrats, your Administration and the public had full access to this information. Unfortunately, you and your staff also failed to engage me or the committee at any time thus I am not surprised by these egregious accusations.

As this letter already contains the exact explanation I will not reiterate, but recommend you view these two hearings, both of which are found on www.PaRedistricting.com:

- House State Government Committee Information Hearing with Ms. Amanda Holt: <https://s3.us-east-2.amazonaws.com/pagopvideo/946333055.mp4>
- House State Government Committee Voting Meeting on HB 2146: <http://www.paredistricting.com/Video/Redistricting>

Myth: “. . . I have significant concern about the timeline for the final passage of this map. As Acting Secretary Degraffenreid noted in a June 28, 2021 letter to the leaders of the four legislative caucuses as well as the Chair of the Legislative Reapportionment Commission, the Department of State and county boards of elections have historically needed at least three weeks to prepare the Statewide Uniform Registry of Electors (“SURE”) to facilitate the nomination petition process, which is statutorily mandated to begin on February 15, 2022.”

Fact: When the PA Supreme Court adopted their maps in 2018, it took the Department of State far less time to update the SURE system. I have full confidence we will get a congressional redistricting map to your desk within your department's arbitrary date of January 24th.

In closing, we have a historic opportunity to sign a non-partisan, citizens' Congressional redistricting map into law. We have a historic opportunity to reset how we develop and approve Congressional redistricting maps. I am willing to work with you and hope you are able to put any issues you have with me aside for the greater good of our beloved Commonwealth. The decision is yours. I hope you side with the people of Pennsylvania over political partisanship.

Sincerely,



Seth M. Grove
State Representative
196th District

Cc: Speaker Bryan Cutler
House Majority Leader Kerry Benninghoff
President Pro Tempe Jake Corman
Senate Majority Leader Kim Ward
Geoff Moulton, Court Administrator of Pennsylvania

EXHIBIT B

Regional Hearings Provide Your Input Search

PA CONGRESSIONAL
REDISTRICTING
PA House Republican Caucus

HOME ABOUT HEARINGS PROVIDE INPUT PRELIMINARY PLAN RESOURCES CONTACT

HOME

Regional Hearings

Each hearing link includes video of the completed hearing, schedule and written testimony, and counties included in the region.

Disclaimer: The general geographic regions are being provided for guidance only to help Pennsylvania residents determine the regional hearing(s) in which they want to participate. Generally, testifiers should participate in the hearing(s) most closely associated with their primary place of residence.

COMPLETED HEARINGS

[Congressional Redistricting 101: Harrisburg](#)

Thursday, July 22

[Stakeholder Input: Harrisburg](#)

Thursday, July 22

[Regional Hearing: Northwest](#)

Tuesday, August 24

[Regional Hearing: Allegheny](#)

Wednesday, August 25

[Regional Hearing: Southwest](#)

Thursday, August 26

[Regional Hearing: North Central](#)

Tuesday, Oct. 12

[Regional Hearing: South Central](#)

Wednesday, Oct 13

[Regional Hearing: Northeast](#)

Monday, Oct. 18

[Regional Hearing: Southeast](#)

Tuesday, Oct. 19

[Regional Hearing: Philadelphia](#)

Wednesday, Oct. 20

[Hearing on Congressional Redistricting and Census Data Analysis](#)

Thursday, Oct. 28

[Informational Meeting on Citizen Map](#)

Thursday, Dec. 9

[Voting Meeting on Preliminary Plan](#)

Monday, Dec. 13

[Voting Meeting on Citizens Map](#)

Wednesday, Dec. 15

Sign up for updates [here](#).

App. 688

[Regional Hearings](#)

[Provide Your Input](#)

[Search](#)

© 2022 PA HOUSE REPUBLICAN CAUCUS. [TERMS OF USE](#)

EXHIBIT C

[Regional Hearings](#)[Provide Your Input](#)[Search](#)

PA CONGRESSIONAL
REDISTRICTING
PA House Republican Caucus

[HOME](#)[ABOUT](#)[HEARINGS](#)[PROVIDE INPUT](#)[PRELIMINARY PLAN](#)[RESOURCES](#)[CONTACT](#)[HOME](#)

Thank You for Providing Your Input

Thank you to every resident who submitted their own congressional district map for consideration, shared with the Chair of the House State Government Committee about their community of interest or took the time to comment on the 2018 Supreme Court map with our online mapping tool. Your involvement to date in this once-in-a-decade process has been very much appreciated.

While the window for providing input into map development is closed, residents can view previously submitted maps, communities of interest and public comments at the links below:

[VIEW PUBLICLY SUBMITTED MAPS](#)

Click here to view validated, publicly submitted maps.

[VIEW SUBMITTED COMMUNITIES OF INTEREST](#)

Click here to view communities of interest identified by Pennsylvanians across the Commonwealth.

[VIEW COMMENTS ON 2018 SUPREME COURT MAP](#)

Click here to read the comments received on the current congressional district map, drawn by the PA Supreme Court in 2018.

[Click here](#) to view additional public comments received by the Chair.

EXHIBIT D



PA STATE REP.
SETH GROVE
Serving PA's 196th Legislative District

[HOME](#)[ABOUT](#)[NEWSROOM](#)[196TH DISTRICT](#)[INITIATIVES](#)[RESOURCES](#)[CONTACT](#)[HOME / LATEST NEWS](#)

Grove Announces Citizen Map Selected as Preliminary Congressional Plan, Invites Public Comment

DEC. 08, 2021



HARRISBURG – Rep. Seth Grove (R-York), chairman of the House State Government Committee, announced today that following the most open and transparent congressional redistricting process in Pennsylvania history, the committee has selected a citizen map as its preliminary congressional plan. The preliminary plan, submitted through the committee's online mapping tool by Lehigh County resident Amanda Holt, is now posted for public comment.

“Over the last several months, advocates and every-day Pennsylvanians told us they didn't want the process of years' past,” Grove said. “The people of Pennsylvania asked for increased public involvement, a map that was drawn by people, not by politicians, and the opportunity to offer comment on a preliminary plan before a final vote was taken.”

“Today, I am proud to announce that a citizen's map, not a map drawn by legislators, has been introduced for consideration by the General Assembly, and for the first time in Pennsylvania history is posted for public view and comment.”

Holt's map was one of the 19 verified statewide maps submitted to the committee through [its online mapping tool](#). To view the preliminary map, residents should visit [paredistricting.com](#) and click on “Preliminary Map.” There, users will be able to view the map and offer public comments.

“The introduction of this map is a starting point, and we look forward to hearing the thoughts of residents across Pennsylvania about how this map would impact their community and how they are represented in Washington, D.C.,” Grove said.

Holt's map was introduced by Grove because it was drawn without political influence; complies with constitutionally mandated criteria; satisfies equal population requirements; limits splits of townships, municipalities and other local subdivisions; and is comprised of districts that are compact and contiguous, all of which were highlighted as priorities by the majority of testifiers and residents throughout the committee's extensive regional hearings and online public input process.

“This is a historic step forward in transparency and good government,” Grove said.

Grove also announced the House State Government Committee would be holding two meetings in Harrisburg on the preliminary plan:

- **Informational meeting** on Thursday, Dec. 9, at 5:30 p.m. in Room G50, Irvis Office Building.
- **Voting meeting** on Monday, Dec. 13, at 8 a.m. in Room 523, Irvis Office Building.

The meetings will also be livestreamed at [paredistricting.com](#).

“I look forward to kicking off the legislative process and getting a map before the people of Pennsylvania for feedback and consideration,” Grove said.

In addition to the ability to comment on the preliminary citizen map, residents can also watch or read testimony from [one of the 12 previously held hearings](#) and view previously [submitted statewide maps, communities of interest and public comments](#).

Representative Seth Grove
196th District

App. 693

Contact Rep. Grove



Search

ggross@pahousegop.com

RepGrove.com / Facebook.com/RepSethGrove

Share  

District Office

2501 Catherine St.
York, PA 17408
717-767-3947
Mon - Fri 8:30 a.m. - 4:30 p.m.

Capitol Office

7 East Wing
PO Box 202196
Harrisburg, PA 17120
717-783-2655

EXHIBIT E

[Home](#) / [Bill and Amendments](#) / [Bill Information](#)

Bill Information - History

House Bill 2146; Regular Session 2021-2022

Sponsors: [GROVE](#)

Printer's No.(PN): [2541*](#) , [2491](#)

Short Title: An Act apportioning this Commonwealth into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census.

Actions:

[PN 2491](#) Referred to [STATE GOVERNMENT](#), Dec. 8, 2021

[PN 2541](#) Reported as amended, [Dec. 15, 2021](#)

First consideration, Dec. 15, 2021

Laid on the table, Dec. 15, 2021

Removed from table, Jan. 10, 2022

Second consideration, Jan. 11, 2022

Re-committed to [APPROPRIATIONS](#), Jan. 11, 2022

Re-reported as committed, [Jan. 12, 2022](#)

Third consideration and final passage, Jan. 12, 2022 ([110-91](#))
(Remarks see House Journal Page), Jan. 12, 2022

In the Senate

Referred to [STATE GOVERNMENT](#), Jan. 12, 2022

Reported as committed, [Jan. 18, 2022](#)

First consideration, Jan. 18, 2022

Second consideration, Jan. 19, 2022

Re-referred to [APPROPRIATIONS](#), Jan. 24, 2022

* denotes current Printer's Number

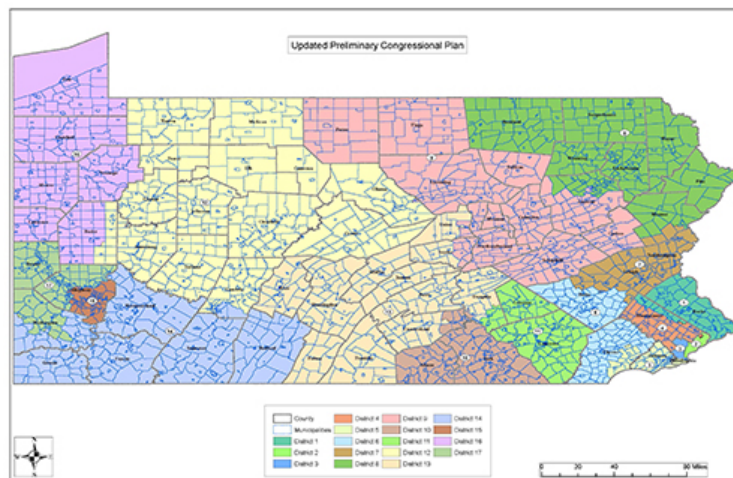
[?](#) [How to Read a Bill](#) [?](#) [About PDF Documents](#)

EXHIBIT F

PA CONGRESSIONAL
REDISTRICTING
 PA House Republican Caucus

Updated Preliminary Congressional Plan

On Dec. 8, 2021, Chairman Grove announced a citizen map was selected as the preliminary congressional plan. On Dec. 15, the citizen's map was updated in committee to incorporate additional public feed back.



[Click here for larger map](#)

» **VIEW AND COMMENT ON THE
 UPDATED PRELIMINARY PLAN**

To view and comment on the updated preliminary congressional plan, [click here](#).

[Click here to download the updated preliminary plan shapefiles.](#)

[Click here to download the preliminary plan block equivalency file.](#)

[Click here to view a preliminary plan and updated plan comparison by population.](#)

[Click here to view a compactness comparison between the preliminary plan and the updated plan.](#)

[Click here](#) to view additional public comments received to date on the updated preliminary plan outside of the online mapping tool.

The updated preliminary plan took into consideration input from the citizens across Pennsylvania. To read the comments received on the initial preliminary plan, [click here](#).

[Click here](#) to watch previously held informational meetings and hearings on the preliminary plan.

[Regional Hearings](#) [Provide Your Input](#) [Search](#)

© 2022 PA HOUSE REFORM COMMISSION. TERMS OF USE

EXHIBIT G



Pennsylvania Redistricting Advisory Council

Redistricting Principles

Under existing state law, Pennsylvania’s congressional districts are drawn by the General Assembly and passed as a regular statute, subject to veto by the Governor. On September 13, 2021, Governor Wolf issued Executive Order 2021-05 establishing the Pennsylvania Redistricting Advisory Council and charging the Council with developing recommendations for the Governor in evaluating a congressional district map passed by the General Assembly.


The Council has identified three types of principles that it believes the Governor should adopt in determining the fairness and propriety of any proposed congressional map presented by the General Assembly. The first are legal principles, drawn from settled constitutional and legal requirements, that serve as a minimal floor of protection against improper maps. Second are principles of representation, three in particular, as described below, that are crucial to assuring equal representation and fairness in a resulting map. Finally, there are procedural principles that should be in place to ensure that Pennsylvania's congressional districts are drawn through a fair and transparent process.

Legal Principles

As an initial step in analyzing a proposed congressional map, the Council believes that the Governor should evaluate the map’s fidelity to traditional neutral criteria that form a “floor” of protection against the dilution of votes in the creation of districts. The Free and Equal Elections Clause of the Pennsylvania Constitution requires that each congressional district be composed of compact and contiguous territory and minimize the division of political subdivisions as practicable.

The Pennsylvania Supreme Court has noted that the goal is to create “representational districts that both maintain the geographical and social cohesion of the communities in which people live and conduct the majority of their day-to-day affairs.” In addition, any proposed map must comply with the requirements of federal law, including most specifically, the constitutional requirement to maintain population equality among congressional districts and the provisions of the Voting Rights Act as they apply in Pennsylvania. *These federal and state legal principles require that, in evaluating a proposed Congressional map, the Governor ensure that these legally mandated elements are complied with, along with other principles noted below.*

- Maintenance of population equality among congressional districts refers to the principle that that each district should be as nearly equal in population as practicable. As a result of the 2020 Census, the ideal Congressional district in Pennsylvania will contain 764,865 residents. *In evaluating a map, the Governor should ensure that the deviations in populations between districts comply with the requirements of the Constitution.*


-
- 
-
- Assurance of contiguity refers to the principle that all territory within a district connect to the rest of the district. *In evaluating a map, the Governor should ensure that all parts of the district are in contact with another part of the district and should disfavor any proposed map in which territory is only connected at a narrow single point.*
 - Maintaining compactness refers to the principle that the boundaries of a district should not be irregularly shaped or sprawl unnecessarily from a central area. Evaluation of compactness tends to focus formulaically on the relationship of the district's perimeter to its area, or the extent to which the district spreads from a central core. *In evaluating a proposed map, the Governor should prioritize plan level geographic compactness unless dispersion is required to advance another positive districting principle, such as preserving communities of interest or avoiding political-subdivision splits.*
 - Minimization of division of political subdivisions refers to the principle that local political subdivisions—such as counties or, where possible, municipalities and school districts— not be arbitrarily split into multiple districts. *In evaluating a proposed map, the Governor should prioritize fewer subdivision splits unless a division is necessary to preserve a cohesive—and clearly identified—community of interest.*
 - Finally, in certain circumstances, but only in those circumstances, the Voting Rights Act requires the creation of “majority-minority” districts to prevent the denial or abridgement of the right to vote based on race, color, or membership in a language minority. *In evaluating a proposed map, the Governor should independently consider whether the Voting Rights Act requires the creation of proposed majority-minority districts.*

Principles of Representation

Assuming a proposed congressional map from the General Assembly complies with the principles above, the Governor should further evaluate the map to ensure that it does not unfairly dilute the power of a particular group's vote. Essential to this evaluation are three additional principles of representation which contribute to the ultimate fairness of a proposed map: communities of interest should be maintained, the composition of the congressional delegation should be proportional to statewide voter preference, and the map should be responsive to changing voter preference. These principles operate as a further check on the two features of partisan gerrymandering: the splitting of communities of voters across several districts to dilute their voting power (cracking), and squeezing as many voters of one political interest into just one or a few districts, thereby wasting their votes in those districts, which decreases the likelihood of success elsewhere (packing). *In evaluating a proposed map, the Governor should consider the extent to which these principles of representation are met, when compared to other potential maps that could have been drawn.*



- Communities of interest are contiguous geographic areas or neighborhoods in which residents share common socio-economic and cultural interests which the residents of the region may seek to translate into effective representation. Examples of shared interests include those common to rural, urban, industrial or agricultural areas, where residents have similar work opportunities, share similar standards of living, use the same transportation facilities, or share common environmental, healthcare, or educational concerns, among others. In statewide listening sessions held by the Council, Pennsylvanians frequently emphasized communities of interest focused around school districts, colleges, industrial corridors, and commuting patterns, and urged particular attention to emerging communities of interest and demographic groups that are growing in Pennsylvania. While a community of interest may be contained within a single political subdivision, they often extend across borders within a region, and may be better represented by regional planning entities such as Councils of Governments. *In evaluating a proposed map, the Governor should consider the extent to which a map preserves cohesive communities of interest, particularly where failure to do so cannot be easily explained by compelling neutral factors outlined above.*
- Ensuring partisan fairness and proportionality requires that parties have the opportunity to translate their popular support into legislative representation with approximately equal efficiency such that the proportion of districts whose voters favor each political party should correlate to the statewide preferences of the voters. Partisan fairness requires preventing structural advantage from being baked into the map so as to allow one party to more efficiently translate votes into seats in the delegation. *In evaluating a proposed map, the Governor should analyze how it would have performed in a full range of prior statewide elections when compared to other potential maps which could have been drawn. A map with expected performance proportional to statewide voter preference should be favored as comporting with broad principles of fairness.*
- Responsiveness and competitiveness require that there are enough districts “in play” that changes in electoral sentiment can translate into clear changes in the overall composition of the congressional delegation. A competitive district is one in which the electoral outcome is close enough that the district can change with shifting voter preferences. A responsive map is one with enough competitive districts to allow for changes in the composition of the delegation with changes in proportion of votes for the parties. Voters should not be deprived of their choice and a fair opportunity to elect candidates they support. *In evaluating a proposed map, the Governor should analyze how it would have performed in a full range of prior statewide elections and favor a map with districts where partisan swings were reflected in changes in the congressional delegation.*



Principles of Process

Beyond both the floor of protection and the additional checks on a partisan gerrymander endorsed above, it is critical that the map passed by the General Assembly be the result of a process that provides an opportunity for meaningful public input, comment, and participation. In the Council's listening sessions, many participants pointed to the public processes that have accompanied citizen-mapping efforts over the past several months as exemplifying the level of transparency that is expected. Procedural fairness begins with strong engagement with members of the public as to their priorities for the redistricting process, with particular focus on hearing about what ordinary Pennsylvanians identify as their communities of interest.

And when the General Assembly's proposed map is shared publicly, a process of robust public engagement and transparency dictates that there be a public record accompanying the map setting forth why specific decisions were made as they were. For instance, if certain counties were split in the map the public is entitled to know the justification for doing so. Likewise, if the proposed map prioritizes specific communities of interest, the public should be told what those communities are and how they were defined. If majority-minority districts are created, there should be a discussion of the factors that resulted in the minority group's denial of equal opportunity to participate in the political processes. *In evaluating a proposed map, the Governor should disfavor any map that is made public and passed quickly with limited legislative debate or opportunity for public consideration. In addition, the Governor should more closely scrutinize any map that is not accompanied by a public record or narrative which explains the rationale for decisions which were made.*

EXHIBIT H

Report on Proposed
Congressional Redistricting Plan
from the Pennsylvania House Republican
Caucus

Dr. Michael Barber
Brigham Young University
724 Spencer W. Kimball Tower
Provo, UT 84604
barber@byu.edu

Contents

1	Introduction and Qualifications	3
2	Summary of Conclusions	5
3	Political Geography of Pennsylvania	7
4	Methods	11
5	Results	16
5.1	Population, Boundary Splits, and Compactness	16
5.2	Partisan Lean of Districts	17
5.3	Partisan Lean of Districts Compared to Simulations	22
5.4	District-by-District Comparisons	23
5.5	Median-Mean Difference	27
5.6	Efficiency Gap	28
5.7	Expected Seats from Uniform Swing	33
5.8	Considerations of Race	35
6	Conclusion	38
7	Appendix A: Additional Statistics	41

1 Introduction and Qualifications

I have been asked by counsel to review the Pennsylvania House of Representatives Republican Caucus’ proposed congressional redistricting plan (hereafter, “HB2146 plan”) and compare it to a set of simulated redistricting plans across a number of factors commonly considered in the redistricting process and in redistricting litigation. To do this, I implement a publicly available and peer-reviewed redistricting simulation algorithm to generate 50,000 simulated district maps, each containing 17 congressional districts. The redistricting algorithm generates a representative sample of districts by following neutral redistricting criteria without regard to partisan data. In this way, the simulated districts establish a comparison set of plans that use purely non-partisan redistricting inputs. I then compare the simulated plans against the proposed plan using a number of commonly used redistricting criteria to assess whether the proposed plan is consistent with what one would expect to see in a redistricting plan composed without reference to any racial or partisan considerations.¹ Across all measures, the proposed plan is well within the distribution of simulated plans and is unbiased, with a slight lean towards favoring Democratic candidates.

I am an associate professor of political science at Brigham Young University and faculty fellow at the Center for the Study of Elections and Democracy in Provo, Utah. I received my PhD in political science from Princeton University in 2014 with emphases in American politics and quantitative methods/statistical analyses. My dissertation was awarded the 2014 Carl Albert Award for best dissertation in the area of American Politics by the American Political Science Association.

I teach a number of undergraduate courses in American politics and quantitative research methods.² These include classes about political representation, Congressional elections, statistical methods, and research design.

I have worked as an expert witness in a number of cases in which I have been asked

¹In a later section I consider the impact of considering only the simulations that meet certain thresholds with regards to the racial composition of some districts.

²The political science department at Brigham Young University does not offer any graduate degrees.

to analyze and evaluate various political and elections-related data and statistical methods. Cases in which I have testified at trial or by deposition are listed in my CV, which is attached to the end of this report. I have previously provided expert reports in a number of cases related to voting, redistricting, and election-related issues: *Nancy Carola Jacobson, et al., Plaintiffs, vs. Laurel M. Lee, et al., Defendants. Case No. 4:18-cv-00262 MW-CAS (U.S. District Court for the Northern District of Florida)*; *Common Cause, et al., Plaintiffs, vs. Lewis, et al., Defendants. Case No. 18-CVS-14001 (Wake County, North Carolina)*; *Kelvin Jones, et al., Plaintiffs, v. Ron DeSantis, et al., Defendants, Consolidated Case No. 4:19-cv-300 (U.S. District Court for the Northern District of Florida)*; *Community Success Initiative, et al., Plaintiffs, v. Timothy K. Moore, et al., Defendants, Case No. 19-cv-15941 (Wake County, North Carolina)*; *Richard Rose et al., Plaintiffs, v. Brad Raffensperger, Defendant, Civil Action No. 1:20-cv-02921-SDG (U.S. District Court for the Northern District of Georgia)*; *Georgia Coalition for the People’s Agenda, Inc., et. al., Plaintiffs, v. Brad Raffensperger, Defendant. Civil Action No. 1:18-cv-04727-ELR (U.S. District Court for the Northern District of Georgia)*; *Alabama, et al., Plaintiffs, v. United States Department of Commerce; Gina Raimondo, et al., Defendants. Case No. CASE NO. 3:21-cv-00211-RAH-ECM-KCN (U.S. District Court for the Middle District of Alabama Eastern Division)*; *League of Women Voters of Ohio, et al., Relators, v. Ohio Redistricting Commission, et al., Respondents. Case No. 2021-1193 (Supreme Court of Ohio)*; *Harper, et al., Plaintiffs, v. Hall et al., Defendants. Case No. 21-CVS-015426 (Wake County North Carolina)*. I have also recently testified before the Pennsylvania Legislative Reapportionment Commission regarding the LRC’s proposed map for the Pennsylvania House of Representatives.

In my position as a professor of political science, I have conducted research on a variety of election- and voting-related topics in American politics and public opinion. Much of my research uses advanced statistical methods for the analysis of quantitative data. I have worked on a number of research projects that use “big data” that include millions of observations, including a number of state voter files, campaign contribution lists, and data

from the US Census. I have also used geographic information systems and other mapping techniques in my work with political data.

Much of this research has been published in peer-reviewed journals. I have published nearly 20 peer-reviewed articles, including in our discipline’s flagship journal, *The American Political Science Review* as well as the inter-disciplinary journal, *Science Advances*. My CV, which details my complete publication record, is attached to this report as Appendix A.

The analysis and opinions I provide in this report are consistent with my education, training in statistical analysis, and knowledge of the relevant academic literature. These skills are well-suited for this type of analysis in political science and quantitative analysis more generally. My conclusions stated herein are based upon my review of the information available to me at this time. I reserve the right to alter, amend, or supplement these conclusions based upon further study or based upon the availability of additional information. The opinions in this report are my own, and do not represent the view of Brigham Young University.

2 Summary of Conclusions

Based on the evidence and analysis presented below, my opinions regarding the HB2146 plan for congressional districts in Pennsylvania can be summarized as follows:

- The contemporary political geography of Pennsylvania is such that Democratic majorities are geographically clustered in the largest cities of the state while Republican voters dominate the suburban and rural portions of the state.
- This geographic clustering in cities puts the Democratic Party at a natural disadvantage when single-member districts are drawn. Specifically, districts drawn to be contiguous, compact, and contain minimal county and municipal splits will naturally create several districts in the Philadelphia and Pittsburgh areas that contain substantial Democratic majorities with many “wasted votes.”

- Based on a comparison between the HB2146 plan, and a set of 50,000 simulated maps, the HB2146 plan is a fair plan with no evidence of partisan gerrymandering across a number of different measures used to assess the fairness of a map.
- Based on an index of statewide elections from 2012-2020, the HB2146 plan generates nine Democratic-leaning districts and eight Republican-leaning districts.
- Based on the same index of statewide elections from 2012-2020, six of the districts in the HB2146 plan will likely be competitive with candidates from both parties having a realistic possibility of winning the seats. Five of these competitive districts are *extremely* competitive, with a partisan index within two percentage points of an even 50/50 split.
- Compared to a second set of simulations that explicitly consider the creation of minority opportunity districts, the HB2146 plan is similarly unbiased. The race-conscious simulations reduce the variation in Democratic-leaning districts substantially, making nine Democratic-leaning districts the overwhelmingly most likely outcome in the simulations.
- Based on these commonly-used measures of redistricting fairness, the HB2146 plan is unbiased, and when compared to the simulations on these same metrics is balanced between occasionally having a slight Republican benefit and occasionally providing a slight benefit to Democratic voters.

3 Political Geography of Pennsylvania

Scholarship in political science has noted that the spatial distribution of voters throughout a state can have an impact on the partisan outcomes of elections when a state is, by necessity, divided into a number of legislative districts. This is largely the case because Democratic-leaning voters tend to cluster in dense, urban areas while Republican-leaning voters tend to be more evenly distributed across the remainder of the state.³ One prominent study of the topic (Chen and Rodden, 2013) finds that “Democrats are highly clustered in dense central city areas, while Republicans are scattered more evenly through the suburban, exurban, and rural periphery...Precincts in which Democrats typically form majorities tend to be more homogenous and extreme than Republican-leaning precincts. When these Democratic precincts are combined with neighboring precincts to form legislative districts, the nearest neighbors of extremely Democratic precincts are more likely to be similarly extreme than is true for Republican precincts. As a result, when districting plans are completed, Democrats tend to be inefficiently packed into homogenous districts” (pg. 241).⁴

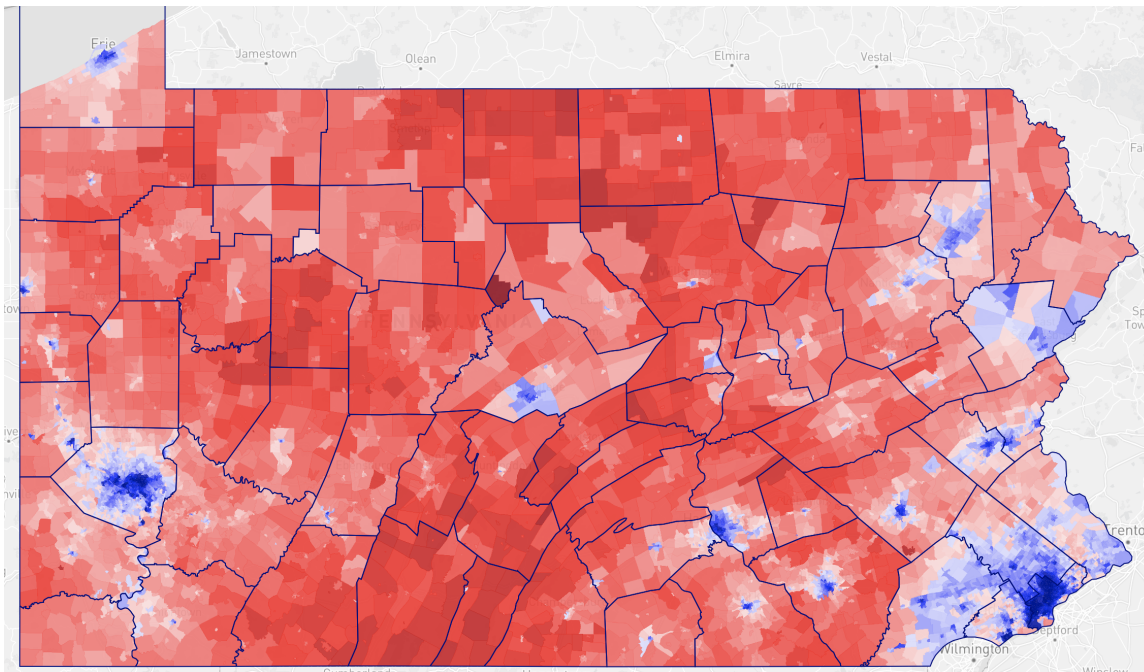
The map below confirms that this is the case in Pennsylvania. There are extremely large Democratic majorities shown in dark blue in and around Philadelphia and Pittsburgh. The remainder of the state contains smaller cities that are Democratic-leaning and large swaths of the state that are solidly Republican.

The upshot of this pattern is that a political party stands at a disadvantage when its voters are not “efficiently” distributed across the state. To understand what I mean by efficient, imagine two different scenarios. First, imagine a party with a slim majority of

³See for example Stephanopoulos, N. O. and McGhee, E. M., Partisan Gerrymandering and the Efficiency Gap, *The University of Chicago Law Review* 82: 831-900, (2015); Chen, J. and Rodden, J., Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures, *Quarterly Journal of Political Science* 8: 239-269, (2013); Nall, C., The Political Consequences of Spatial Policies: How Interstate Highways Facilitated Geographic Polarization, *Journal of Politics*, 77(2): 394-406, (2015); Gimple, J. and Hui, I., . Seeking politically compatible neighbors? The role of neighborhood partisan composition in residential sorting, *Political Geography* 48: 130-142 (2015); Bishop, B., *The Big Sort: Why the Clustering of Like-Minded America is Tearing Us Apart*, Houghton Mifflin Press (2008); and Jacobson, G. C., and Carson, J. L., *The Politics of Congressional Elections*, 9th ed. Lanham, MD: Rowman and Littlefield (2016).

⁴Chen, J. and Rodden, J., Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures, *Quarterly Journal of Political Science* 8: 239-269, (2013)

Figure 1: Distribution of People and Partisan Preferences in Pennsylvania



Note: Distribution of Partisan Preferences in Pennsylvania based on the average of statewide partisan elections. Blue = Democratic, Red = Republican

voters statewide in which every precinct's vote share perfectly reflected the overall state. In other words, the party has a slight majority in every precinct that adds up to a slight majority statewide. In this case, this party's voters are extremely efficiently distributed in such a way that the party will win every single district despite only a slim majority statewide. Now imagine a different arrangement: a party that still holds a slim majority statewide, but whose voters are heavily concentrated in a few areas and sparsely populated throughout the rest of the state. In this case, despite holding a majority of votes statewide, the party will only win a few seats where their voters are heavily concentrated. The political geography of Pennsylvania closely resembles this second scenario.

The geographic concentration of a party's voters tends to harm that party when single-member districts are drawn by creating districts that favor that party by very large margins, thus "wasting" many votes by running up large majorities far beyond 50%+1.⁵

⁵McGhee, E. (2017). Measuring Efficiency in Redistricting. *Election Law Journal: Rules, Politics, and Policy*, 16(4), 417-442. doi:10.1089/elj.2017.0453

This occurs in Pennsylvania at the scale of congressional districts in the two largest cities of the state - Pittsburgh and Philadelphia. The overwhelming margins for the Democratic Party in these cities are what drives “wasted votes,” which in turn translate to fewer seats than the statewide proportion of votes would suggest.⁶

For example, Philadelphia is large enough to constitute roughly 2.1 congressional districts. Thus, a plan that attempts to avoid splitting counties will draw two districts entirely within the city of Philadelphia.⁷ In the HB2146 plan Districts 2 and 3 are completely contained in Philadelphia. In the 2020 presidential election, the city of Philadelphia supported the Democratic candidate, Joe Biden, by an 81.4% to 17.9% margin. As a result, the two congressional districts that will be contained within the city, whatever their configuration, will be overwhelmingly Democratic and contain hundreds of thousands of wasted votes that could be used more efficiently if they were geographically distributed more evenly across the state.

The story is very similar in Pittsburgh and Allegheny County as well. Pittsburgh is not large enough to contain a single congressional district. However, its population is roughly 40% of the size required for a congressional district in 2020. Allegheny County’s population is larger than a congressional district (its 2020 population was roughly equal to 1.6 congressional districts), and thus a plan that draws district boundaries that are geographically compact and avoid splitting counties and cities will contain a congressional district within Allegheny County that also contains the city of Pittsburgh. In the HB2146 plan District 15 contains the city of Pittsburgh and is entirely contained in Allegheny County. Both Pittsburgh and Allegheny County are very Democratic leaning. In the 2020 presidential election, the city supported Joe Biden by a 78% to 20.9% margin and Allegheny County supported Biden by a 59.7% to 39.2% margin. As a result, whichever congressional district Pittsburgh

⁶The term “wasted votes” in political science is not to imply that a person’s vote is not important or counted, but rather that the vote is not helpful in gaining an additional seat for their preferred party if it is an additional vote in favor of a candidate that has already won a majority of the votes in their district. Technically, all votes beyond 50%+1 are “wasted”. However, parties are interested in winning by majorities larger than 50%+1, but not by margins beyond the point at which their candidate is quite certain to win.

⁷Philadelphia city and county are coterminous.

is drawn into will be extremely Democratic as a result of the strong support for Democratic candidates in Pittsburgh and its immediate suburbs within Allegheny County.

Taken together, this suggests that any plan that follows the non-partisan criteria of drawing maps that are geographically compact and avoid splitting counties and cities will begin with three districts (2 in Philadelphia and 1 in Allegheny County centered in Pittsburgh) that are extremely Democratic leaning with an abundance of wasted votes. The spillover effect of this natural packing of Democratic voters is that the remaining 14 congressional districts will be more favorable to Republican voters than if the Democratic voters in these two large cities were more evenly distributed across the state.

The inefficient distribution of voters in Pennsylvania would not be a problem for Democrats if district boundaries were able to amble about the state and divide counties and municipalities to create districts that had less overwhelming Democratic support. Rodden (2019) notes this by saying: “Democrats would need a redistricting process that intentionally carved up large cities like pizza slices or spokes of a wheel, so as to combine some very Democratic urban neighborhoods with some Republican exurbs in an effort to spread Democrats more efficiently across districts” (pg. 155).⁸ However, the provisions governing redistricting in Pennsylvania run counter to either of these strategies. The Pennsylvania Supreme Court’s decision in *League of Women Voters of Pa. v. Commonwealth* establishes that congressional redistricting plans must adhere to traditional redistricting rules that require districts to be geographically compact and to avoid county and municipal divisions. It thus prohibits the type of meandering districts that Rodden describes above. In the end, this means that Republicans begin the redistricting process with a natural geographic advantage due to the constraints of where and how districts can be lawfully drawn combined with the particular spatial distribution of their voters.

⁸Rodden, Jonathan A. *Why cities lose: The deep roots of the urban-rural political divide*. Hachette UK, 2019.

4 Methods

To gauge the degree to which the HB2146 plan is a partisan gerrymander, I conduct simulated districting analyses to allow me to produce a large number of districting plans that follow traditional redistricting criteria using small geographic units as building blocks for hypothetical legislative districts. This simulation process ignores all partisan and racial considerations when drawing districts. Instead, the computer simulations are programmed to create districting plans that follow traditional districting goals without paying attention to partisanship, race, the location of incumbent legislators, or other political factors. This set of simulated districts is helpful because it provides a set of maps to which we can compare the HB2146 map that also accounts for the geographic distribution of voters. Because voters are not distributed evenly across the state (as discussed in the previous section), we cannot evaluate the fairness of a proposed plan without an apples-to-apples comparison. In other words if a plan is not evaluated against a comparison set of maps that also use the same political geography of the state, then potential issues or red flags in the map may not at all be due to partisan gerrymandering, but rather the geographic distribution of voters in the state. By comparing a proposed map to a set of alternative maps that are drawn using only non-partisan districting criteria that *also* consider the same geographic distribution of voters, we can identify if oddities or patterns in the proposed plan are due to the political geography of the state because the simulated maps are drawn *using the same political geography*. In other words, by comparing the HB2146 map to the simulated districts, we are comparing the proposal to a set of alternative maps that we know to be unbiased that holds constant the political geography of the state. If the HB2146 map produces a similar outcome as the alternative set of maps, we may reasonably conclude that the HB2146 plan is unbiased. Alternatively, if the HB2146 plan significantly diverges from the set of simulated maps, it suggests that some other criteria that were not used in drawing the comparison set of maps may have guided the decisions made in drawing the proposed map.

The process of simulating districting plans has been recognized and used in a variety

of redistricting litigation, including in Pennsylvania.⁹ While different people employ slightly different methods, the overall process is much the same. For my simulations, I use a program developed by Fifield et al. (2020).¹⁰

A significant advantage of the simulation-based approach is the ability to provide a representative sample of possible districting plans that accounts for the unique political geography of a state, such as the spatial distribution of voters or the location and number of administrative boundaries, such as counties. Simulation methods can also to a degree incorporate each state's unique redistricting rules. The simulation-based approach therefore permits us to compare a particular plan to a large number of representative districting plans in Pennsylvania. In the simulations I run, I instruct the model to generate plans that adhere to the redistricting criteria discussed in the *League of Women Voters* case: equal population, compactness, and minimizing political subdivision splits.

A major factor in the validity of the simulated maps is whether or not they constitute a representative sample of the trillions of possible maps that could be drawn.¹¹ If the sample produced by the simulations is not representative, then we may be comparing the proposed map to a biased selection of alternative maps, which renders the value of the comparison much less useful.

A specific benefit of the particular algorithm I use here is that the authors show math-

⁹See *League of Women Voters of Ohio v. Ohio Redistricting Commission* (2021); *Harper v. Hall* (2021); *Common Cause v. Lewis* (2019); *Harper v. Lewis* (2019); *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* (2018); *City of Greensboro v. Guilford County Board of Elections* (2017); January 6, 2022 testimony for PA LRC from Kosuke Imai and Michael Barber.

¹⁰Fifield, Benjamin, , Michael Higgins, Kosuke Imai, and Alexander Tarr. "Automated redistricting simulation using Markov chain Monte Carlo." *Journal of Computational and Graphical Statistics* 29, no. 4 (2020): 715-728.

Fifield, Benjamin, Kosuke Imai, Jun Kawahara, and Christopher T Kenny. 2020. "The essential role of empirical validation in legislative redistricting simulation." *Statistics and Public Policy* 7 (1): 52-68.

Kenny, Christopher T., Cory McCartan, Benjamin Fifield, and Kosuke Imai. 2020. *redist: Computational Algorithms for Redistricting Simulation*. <https://CRAN.R-project.org/package=redist>.

McCartan, Cory, and Kosuke Imai. 2020. "Sequential Monte Carlo for sampling balanced and compact redistricting plans." arXiv preprint arXiv:2008.06131.

¹¹Tam Cho, Wendy K., and Yan Y. Liu. "Toward a talismanic redistricting tool: A computational method for identifying extreme redistricting plans." *Election Law Journal* 15, no. 4 (2016): 351-366. Cho, Wendy K. Tam, and Bruce E. Cain. "Human-centered redistricting automation in the age of AI." *Science* 369, no. 6508 (2020): 1179-1181. McCartan, Cory, and Kosuke Imai. "Sequential Monte Carlo for sampling balanced and compact redistricting plans." arXiv preprint arXiv:2008.06131 (2020).

ematically and in a small-scale validation study that their method produces a representative sample of maps. With regards to this issue, the authors state:

Yet, until recently, surprisingly few simulation algorithms have existed in the published scholarship. In fact, most of these existing studies use essentially the same Monte Carlo simulation algorithm where a geographical unit is randomly selected as a “seed” for each district and then neighboring units are added to contiguously grow this district until it reaches the pre-specified population threshold (e.g., Cirincione, Darling, and O’Rourke 2000; Chen and Rodden 2013). Unfortunately, no theoretical justification is given for these simulation algorithms, and hence they are unlikely to yield a representative sample of redistricting plans for a target population....Unlike the aforementioned standard simulation algorithms, the proposed algorithms are designed to yield a representative sample of redistricting plans under contiguity and equal population constraints.¹²

Specifically, the model is constrained to conduct 50,000 simulations in which each simulation generates 17 districts that are of roughly equal population (<0.5% deviation above or below the target population of 764,865). While congressional districts are constrained to contain a truly equal population, it is not possible to place such a strict constraint on the model. Because of this, I relax the constraint to allow for a 0.5% deviation, or a roughly 3,800 person deviation. This is common in redistricting simulations of congressional districts, including in litigation presented to, and relied upon by the Pennsylvania Supreme Court in the 2018 *League of Women Voters* case. The process for zeroing out population on any given simulation map would have minimal to no impact on the partisan outcomes.¹³

¹²Cirincione, C., Darling, T. A., and O’Rourke, T. G. (2000), “Assessing South Carolina’s 1990s Congressional Districting,” *Political Geography*, 19, 189–211. DOI: 10.1016/S0962-6298(99)00047-5. Chen, J., and Rodden, J. (2013), “Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures,” *Quarterly Journal of Political Science*, 8, 239–269. DOI: 10.1561/100.00012033.

¹³See for example: Expert report of Dr. Wesley Pegden in *League of Women Voters of Pennsylvania* case, whose simulations use a 2% population constraint. Expert report of Dr. Jonathan Mattingly in *Harper v. Hall* in North Carolina, whose congressional simulations use a 1% population constraint and states, “We have verified in previous work in related settings that the small changes needed to make the districting plan

The algorithm generates 17 congressional districts with each run by assembling small geographic units — electoral precincts — into larger groups until a group of precincts is large enough to constitute a new legislative district. It then repeats this process 50,000 times, generating a different set of 17 districts with each run of the model. In each of the 50,000 iterations, the model is instructed to generate geographically compact districts that do not divide cities, boroughs, townships, and other municipal corporations. No city in Pennsylvania is larger than a congressional district aside from Philadelphia. As a result, there are no split precincts or municipalities (aside from the necessity of dividing Philadelphia into multiple districts due to its population) in the simulated districts. I constrain the model to not split municipalities because of the constitutional instructions in Article II, Section 16 that no city, incorporated town, borough, township or ward shall be divided unless “absolutely necessary”. Although Article II Section 16 does not on its face apply to congressional redistricting, the *League of Women Voters* case held that an “essential part” of an inquiry into whether a congressional plan is constitution under the Free and Equal Elections Clause is if the districts created under the plan are: “composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population” (645 Pa. 1, 123, 2018). Later, the court described this principle as the “minimization of the division of political subdivisions” (Id). Thus, if it is possible to generate districts that do not split municipalities and stay within the 0.5% population constraint, it is therefore not “absolutely necessary” to split municipalities aside from Philadelphia when constructing simulated districts. The process for zeroing out population on any given simulation map would, of course, require the division of some municipal corporations, but not many. The model is also instructed to draw districts that cross county boundaries as few times as

have perfectly balanced populations do not change the results.” See also expert report of Daniel Magleby in *Harper v. Hall* in North Carolina. Also, expert report of Kouske Imai in *League of Women Voters of Ohio v. Ohio Redistricting Commission*, who uses a 0.5% population deviation and states, “Although this deviation is greater than the population deviation used in the enacted plan, it only accounts for less than 4,000 people and hence has no impact on the conclusions of my analysis.”

possible. County populations do not always add up to round units of districts, and thus some county boundaries will be need to be traversed. The model is further instructed that when a county boundary needs to be crossed, it should avoid splitting the county more times than necessary.

Once the simulated district plans are complete, only then do I compute the partisan composition of each district in each plan. For the partisan composition of each district I rely on the election results from statewide elections disaggregated to the level of the election precinct. I then reassemble these election results for each of the simulated districts in each of the 50,000 simulations to compute the proportion of votes across all statewide elections conducted between 2012 and 2020 that were won by the Democratic and Republican candidates in those districts.¹⁴ In other words, the partisan index is the average vote share for Democratic candidates in each district for the statewide elections considered between 2012-2020. I choose the period 2012-2020 because it represents an entire decade of elections between decennial censuses when redistricting traditionally occurs. Averages of multiple elections have the benefit of “washing out” the impact of any particular election, since individual elections can vary due to particular idiosyncratic candidate features. Furthermore, particular years can vary due to national electoral waves (i.e. 2018 was an especially good year for Democrats while 2016 was an especially good year for Republicans nationwide). Later in the report I also display the results using a variety of alternative election indices.

¹⁴The particular races are 2020: President, Auditor, Attorney General, Treasurer; 2018: Governor, US Senate; 2016: President, US Senate, Auditor, Attorney General, Treasurer; 2014: I do not include statewide judicial elections in the index. It is uncommon in political science to use judicial elections to measure voters’ partisan preferences as research suggests voters treat judicial elections very differently, even when judges run under party labels, than they do partisan elections to legislative and executive positions. Other commonly used measures indices such as Dave’s Redistricting and PlanScore.com also omit judicial elections from their partisan indices.

5 Results

5.1 Population, Boundary Splits, and Compactness

Table 1 below compares the HB2146 plan to the distribution of simulations for boundary splits, and compactness. The HB2146 plan splits 15 counties, which is within the range of county splits in the simulations. The HB2146 plan divides only 16 municipalities, one of which would be Philadelphia, which is required to be divided because the city’s population is larger than a single congressional district. Furthermore, the requirement that the proposal contain exact population equality will require the division of some municipalities since the combination of cities into districts will not necessarily lead to the exact population needed for a congressional district. Finally, the HB2146 plan has only nine precinct splits. On the whole, the plan performs exceptionally well at having few county, municipal, and precinct splits. With regards to district compactness, the HB2146 plan’s average district compactness score closely aligns with the results of the simulations. District-by-district measures of compactness as well as a list of specific counties and municipalities that are split are contained in the appendix of this report.

Table 1: HB2146 plan and 50,000 Simulations: Subdivision Splits, and Compactness

	HB2146 plan	Simulations Median	Simulations Range
Boundary Splits			
Counties Split:	15	12	[7, 15]
Municipalities Split:	16	1	[1, 1]
Precincts Split:	9	0	[0, 0]
Compactness			
Average Polsby-Popper:	0.32	0.28	[0.22, 0.35]

Note: As described above, the simulations are constrained to not divide municipalities, aside from Philadelphia, which is too large to be contained within one district. However, exact population equality requires some municipalities be split in the proposed plan.

5.2 Partisan Lean of Districts

Before comparing the proposal to the simulations, I first present the results of the partisan index for each district in the HB2146 plan. Figure 2 shows this for the 17 districts in the plan. Districts are ordered from least Democratic at the bottom to most Democratic at the top. Districts with a partisan index less than 0.50 are Republican leaning and districts with a partisan index greater than 0.50 are Democratic leaning. A vertical dashed line is placed at 0.50 for reference. In the plan there are eight Republican-leaning districts with an index less than 0.50 (on the left side of the dashed line at .50) and nine Democratic-leaning districts with an index greater than 0.50 (on the right side of the dashed line at .50). The grey horizontal lines around each point show the range of election outcomes for all of the statewide elections used to generate the index. Districts in which the Republican candidate for statewide elections won the majority of the two-party vote share in all of the statewide races in that district are shown as red squares while districts where the Democratic candidate for statewide elections won the majority of the two-party vote share in all of the statewide races in that district are shown as blue triangles. Districts where both parties have won a majority of the two-party vote share in these statewide races in the district are displayed as green circles. Looking at the range across the index, there are six districts colored red (reliably Republican), five blue districts (reliable Democratic), and six green districts (competitive) in the plan. Using an alternative definition of competitiveness based on the closeness of the index to 0.50, there are five districts with an index between 0.48 and 0.52. A range of two percentage points is a commonly used measure of competitiveness in congressional elections.

A few key points come out of this figure. First, we see the result of the natural clustering of Democratic voters in Philadelphia and Pittsburgh. Districts 3 and 2 are the most Democratic leaning and are entirely contained within Philadelphia in the HB2146 plan. District 15 is the third most Democratic leaning district and contains the entirety of Pittsburgh and some of its surrounding suburbs in Allegheny County. These districts are

overwhelmingly Democratic leaning. In fact, they are much more Democratic than the degree to which the most Republican-leaning districts lean towards Republicans. For example, the most Democratic district (District 3) has a partisan index of 0.92 while the most Republican district (District 13) has a partisan index of 0.35 (0.35 is much closer to .50 than 0.92 is to 0.50). This illustrates the idea that geographic clustering of voters when divided into single member districts that are compact and avoid dividing counties and cities generally lead to more wasted votes for Democrats than for Republicans.

The second major point is that the HB2146 plan generates a significant number of competitive districts. Electoral competitiveness is an essential component of a liberal democracy. The threat of electoral defeat is critical to creating a democratic government in which elected officials are responsive to public opinion and are held accountable for their decisions while in office.¹⁵

I use two different metrics to measure competitiveness.

The first measure considers a district competitive if both a Democratic and Republican candidate for statewide federal office between 2012-2020 have won a majority of the two-party vote share in that district. Figure 2 shows these districts as green circles. Note how the grey line in each of these districts crosses the 0.50 line, indicating that both Republican and Democratic candidates for statewide office have won a majority of votes in that district. This approach has the virtue of considering the candidate-specific characteristics that a partisan average or index would not measure. For example, particular candidates from either party might outperform their party's average candidate performance. This is important to consider because actual elections are determined by which candidate wins the most votes, not the result of an average of votes cast, and individual elections in individual

¹⁵Mayhew, David R., 1974. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press.
Gordon, Sanford C., and Gregory Huber. "The effect of electoral competitiveness on incumbent behavior." *Quarterly Journal of Political Science* 2, no. 2 (2007): 107-138.
Ansolabehere, Stephen, David Brady, and Morris Fiorina. "The vanishing marginals and electoral responsiveness." *British Journal of Political Science* 22, no. 1 (1992): 21-38.
Dropp, Kyle, and Zachary Peskowitz. "Electoral security and the provision of constituency service." *The Journal of Politics* 74, no. 1 (2012): 220-234.

districts are influenced by the characteristics and qualities of individual candidates. Using this metric, there are 6 competitive districts (Districts 16, 8, 17, 7, 6, and 1).

The second measure of competitiveness uses the partisan index and simply looks at districts where the partisan index is within two percentage points of 50% of the two-party vote share. Scholars have often used two percentage points as a heuristic for hyper-close races in which unforeseen or “knife-edge electoral shifts” can change election results.¹⁶ Furthermore, recent studies of the legislative incumbency advantage have suggested a decline in the benefit afforded to incumbents by voters with more recent estimates being between 3 and 4 percentage points, which divided symmetrically would yield roughly 2 points on either side of the 50% vote margin.¹⁷ Using this metric, there are five competitive districts (Districts 8, 17, 7, 6, and 1).

Unlike the first metric described above, this measure of competitiveness is based on the average performance of candidates. Both metrics have their benefits and drawbacks. The virtue of using the average is that it “washes out” the impact of any one particular candidate by aggregating multiple election results together. The virtue of the “bipartisan victories” metric described above is that it captures the fact that particular candidates often perform very differently from what a partisan index would predict. Thus, the virtues of the first are in many ways the drawbacks of the second, and vice versa. As a result, including both presents a more complete picture. In either case, the HB2146 plan creates a substantial number of competitive districts.

A final point to note is that among these competitive districts, four of them lean Democratic. In other words, while both parties will likely win these districts some of the time, Democratic candidates are slightly favored in four of the five (or six depending on the measure of competitiveness) competitive districts in the plan.

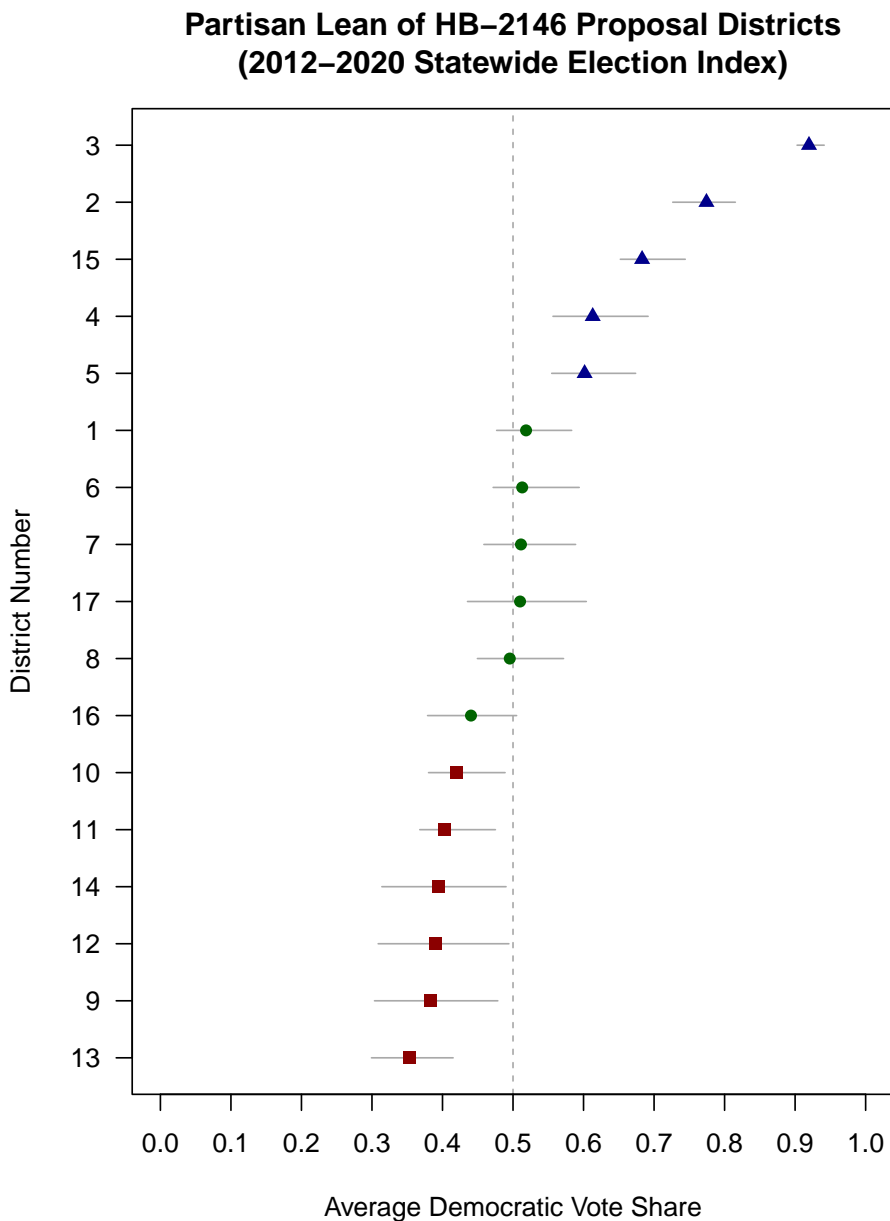
It is important to note that partisan averages — such as the ones I have created here

¹⁶Erikson, Robert S., and Rocío Titiunik. “Using regression discontinuity to uncover the personal incumbency advantage.” *Quarterly Journal of Political Science* 10, no. 1 (2015): 101-119.

¹⁷Jacobson, Gary C. “It’s nothing personal: The decline of the incumbency advantage in US House elections.” *The Journal of Politics* 77, no. 3 (2015): 861-873.

— are useful, but not perfect. Every congressional race is different. Individual candidate factors such as prior elected experience, professional background, gender, and ties to the local community are all important factors in determining candidate success. Campaigns and the issues and policies that candidates choose to emphasize and endorse are also important. These factors all contribute to making each race unique and slightly different from what an index of statewide election results might predict. In other words, no election will perfectly mirror the partisan average for that district based on an index of election results, and in some cases that difference could be quite large.

Figure 2: Partisan Index of HB2146 plan Congressional Districts



Note: Partisan Index based on the average of statewide partisan races between 2012-2020. Districts with a partisan index less than 0.50 are Republican leaning and districts with a partisan index greater than 0.50 are Democratic leaning. A vertical dashed line is placed at 0.50 for reference. The grey horizontal lines around each point show the range of election outcomes for all of the statewide elections used to generate the index. Districts in which the Republican candidate for statewide elections won the majority of the two-party vote share in all of the statewide races are shown as red triangles (there are 6 of them) while districts where the Democratic candidate for statewide elections won the majority of the two-party vote share in all of the stateside races are shown as blue triangles (there are 5 of them). Districts where both parties have won a majority of the two-party vote share in these statewide races are displayed as green circles (there are 6 of them).

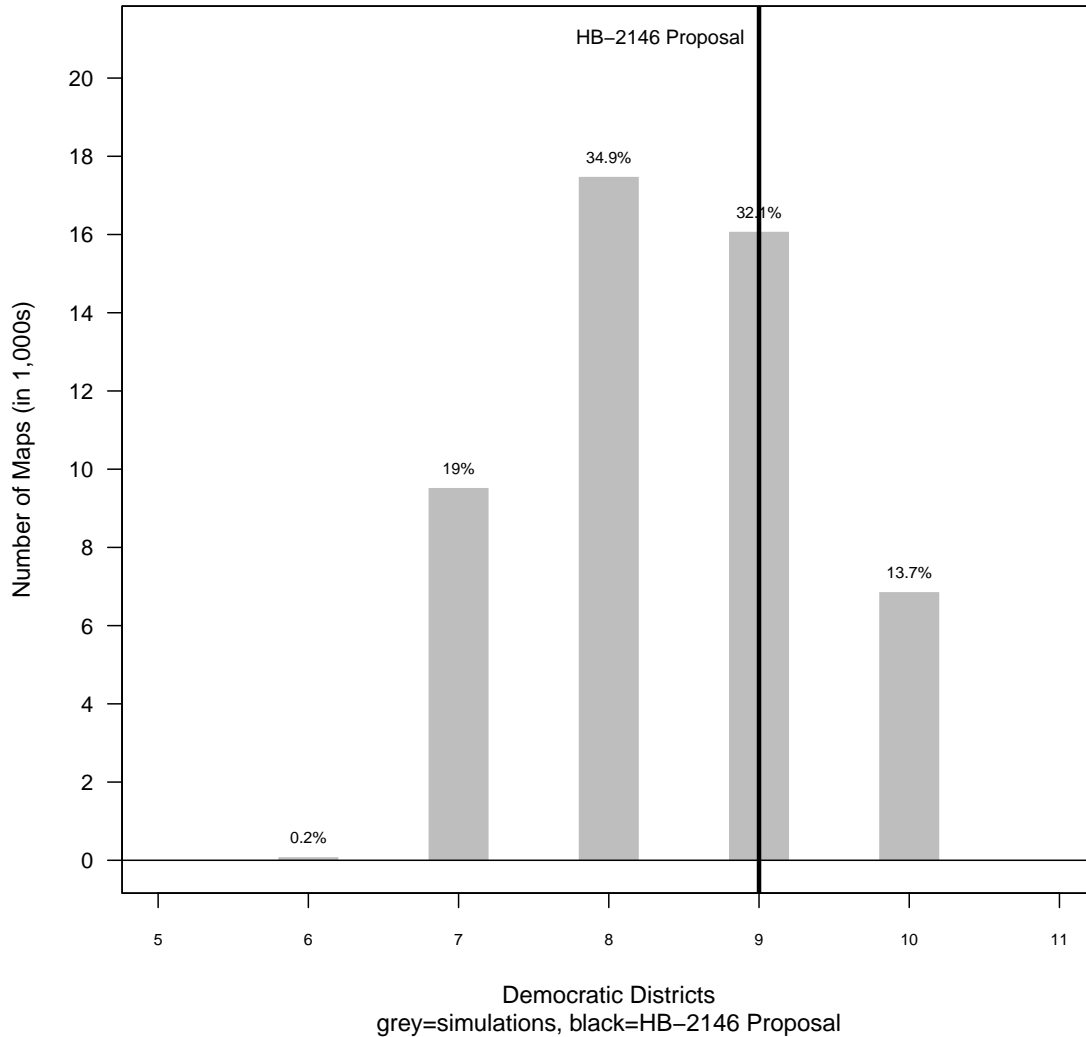
5.3 Partisan Lean of Districts Compared to Simulations

Figure 3 displays the distribution of Democratic-leaning districts in both the simulations and the HB2146 plan using the 2012-2020 partisan index discussed above. If a district in the simulations or in the HB2146 plan has a partisan index greater than 0.50, I call that a Democratic-leaning district. Likewise, if a districts in the simulations has a partisan index less than 0.50, I call that a Republican-leaning district. The grey histogram shows the distribution of Democratic-leaning seats generated by the simulations. The simulations generate between six and ten Democratic-leaning districts, and the numbers above each bar in the histogram display the proportion of simulated maps that generate each outcome. For example, in 34.9% of the simulations there are eight Democratic-leaning districts (and therefore nine Republican-leaning districts). The solid black vertical line shows the results of calculating the partisan index for the HB2146 plan. The HB2146 plan generates nine Democratic leaning districts, which is in line with the distribution of Democratic-leaning seats generated by the simulations (32.1% of the simulations generate this result). As noted above, the most common outcome in the simulations is eight Democratic-leaning seats, which is one less than the HB2146 plan generates.

Recall that in using the simulations we are comparing the proposed map to a set of maps drawn by the computer using only those criteria that I instructed the algorithm to follow - namely the pre-specified nonpartisan criteria of equal population, contiguity, geographic compactness and a preference for fewer county splits. Both the HB2146 plan and the simulations account for the unique political geography of Pennsylvania. Doing so shows us that the HB2146 plan is within the middle portion of simulation results and if anything leans slightly towards the Democratic party by generating nine Democratic-leaning districts rather than eight, which is the modal outcome in the simulations. By no standard definition would the plan be considered an outlier.

Figure 3: Partisan Composition of HB2146 plan and Simulations

**Comparison to 50,000 simulated PA congressional plans:
(drawn with population equality, compactness, and minimal county splits)**



Note: The grey distribution is the number of Democratic seats generated from the 50,000 simulations. The vertical black line is the number of Democratic leaning seats in the HB2146 plan. The HB2146 plan generates 9 Democratic leaning districts. The partisan lean of districts in the simulations and the HB2146 plan are calculated as the two-party vote share of statewide partisan elections from 2012-2020.

5.4 District-by-District Comparisons

While Figure 3 shows the position of the HB2146 plan in relation to the simulations overall, it is also instructive to look at a district-by-district level to see if any particular district stands out as an outlier. Figure 4 below does this for each of the 17 districts in

the state. The figure plots the partisan lean of each district across all of the simulations ordered from least Democratic at the top to most Democratic at the bottom of the figure. The simulation results are displayed in grey and generate a “cloud” or range of partisan outcomes for each district. The black dots in the figure show the partisan lean of each of the districts in the HB2146 plan and their relative position within the simulations. Next to each district is text showing the position of the HB2146 plan in relation to the simulations. For example, in the most Republican-leaning district (District 13) at the top of the figure, the HB2146 plan is more Democratic than 64% of the simulations in that district.

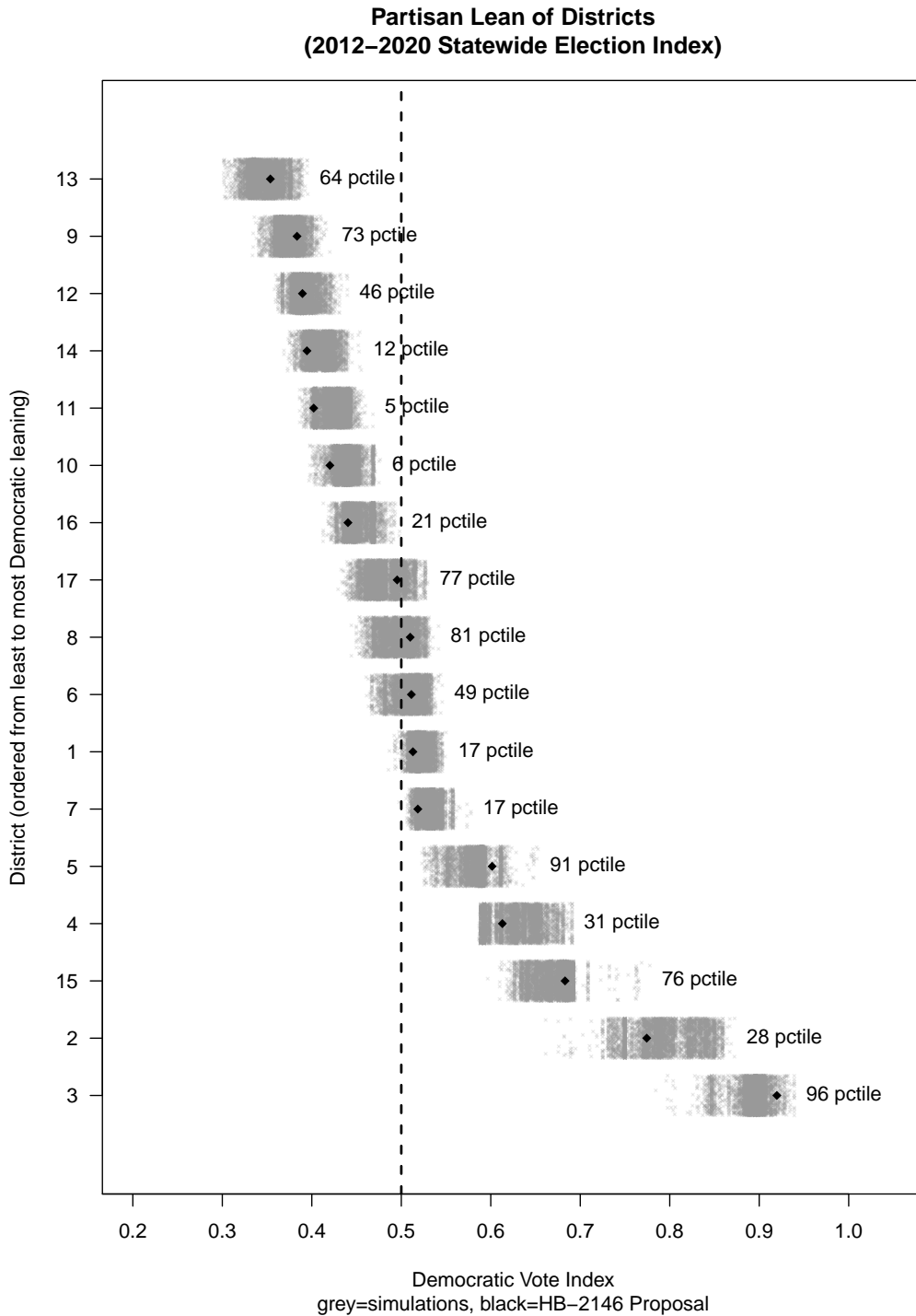
Looking district by district, we see that in most cases the HB2146 plan sits well within the middle of the distribution of simulations. In a few cases it stands out as an outlier, and I consider each of these cases one by one. In the 5th and 6th most Republican districts (Districts 11 and 10 in the HB2146 plan, as labelled on the vertical axis of the figure) the HB2146 plan is at the Republican edge of the simulation results indicating that the HB2146 plan is more Republican than only five and six percent of the simulations in these two districts, respectively. However, both of these districts are squarely Republican leaning, even in the simulations that are more favorable to Democrats.

In the 5th most Republican district (District 11 in the HB2146 plan) the partisan index of the HB2146 plan is 0.40 while the median simulation has a partisan index of 0.42. In other words, District 11 is only two points away from the median simulation in this district, and a partisan index of 0.40 or 0.42 would be a safely Republican districts in either case.

The same is true of the 6th most Republican district in the simulations, which is District 10 in the HB2146 plan. This district has a partisan index of 0.42 in the HB2146 plan while the median simulation has a partisan index of 0.435. In other words, District 10 is only 1.5 percentage points away from the median simulation in this district, and a partisan index of 0.42 or 0.435 would be a safely Republican districts in either case. In other words, in these two districts, the position of the HB2146 plan in relation to the median simulation will have minimal real-world impact on the electoral outcomes in those districts.

As described above, the HB2146 plan produces five districts that are extremely competitive with a partisan index within two percentage points of 0.50 (Districts 17, 8, 6, 1, and 7). In two of those five districts, the proposal is more Democratic than the median partisan index in the simulations (Districts 17 and 8), is very near the median simulation in one of the districts (District 6), and in two of these districts (Districts 1 and 7) the HB2146 plan is more Republican than the median simulation. Thus, in the districts where a shift of a few percentage points really could make a difference in the party that wins a congressional seat, the HB2146 plan is balanced between favoring Democrats in 2 of the districts, Republicans in 2 of the districts, and neither party in 1 of the districts when compared to the distribution of simulation results.

Figure 4: Partisan Composition of HB2146 plan and Simulations



Note: The grey ‘clusters’ show the range of vote margins for each district, ordered from least Democratic to most Democratic in the 50,000 simulations. The black dot inside of each cluster shows the partisan index for the HB2146 plan. Next to each cluster is the percentile, or relative position of the HB2146 plan within each cluster of simulation results for each district.

5.5 Median-Mean Difference

Another common measure of the partisan slant of a districting plan is the median-mean difference.¹⁸ The median-mean measure is calculated by taking the median value of the partisan index across all 17 districts in a plan (the value for which half of the observations are smaller and half the observations are larger) and subtracting from that the mean partisan index (the simple average) of all of the districts from the median. Consider a simple example in which there are three districts in a plan with partisan indices of 0.91, 0.46, and 0.40. To find the median we simply look for the district for which there is one district larger and one district smaller (0.46 in this case). To find the mean, we simply take the average by dividing the sum of the partisan indices by the number of districts. In this case, $(0.91+0.46+0.40)/3 = 0.59$. The median-mean value would then be $0.46-0.59 = -0.13$. As in this example, in Figure 5 I take the Democratic vote share of the median district minus the mean Democratic vote share for all 17 districts in the HB2146 plan. Negative numbers indicate a districting plan that favors Republicans and positive numbers indicate a slant in favor of Democrats.

The median-mean test is essentially a test of skew, or in the context of redistricting packing voters into legislative districts. If voters of one party are packed into few districts, those districts will have very high vote shares for one party and will pull the value of the mean district partisanship away from the district partisan index of the median district.¹⁹ This indicates that the party that is packed into the districts with overwhelming majorities will have a harder time translating their votes into seats.²⁰

¹⁸See Best, Robin E., Shawn J. Donahue, Jonathan Krasno, Daniel B. Magleby, and Michael D. McDonald. "Considering the prospects for establishing a packing gerrymandering standard." *Election Law Journal* 17, no. 1 (2018): 1-20. Warrington, Gregory S. "A comparison of partisan-gerrymandering measures." *Election Law Journal: Rules, Politics, and Policy* 18, no. 3 (2019): 262-281. Wang, Samuel S-H. "Three tests for practical evaluation of partisan gerrymandering." *Stan. L. Rev.* 68 (2016): 1263. McDonald, Michael D., and Robin E. Best. "Unfair partisan gerrymanders in politics and law: A diagnostic applied to six cases." *Election Law Journal* 14, no. 4 (2015): 312-330.

¹⁹A helpful analogy is to imagine a representative group of 100 Americans gathered at a restaurant. The median and mean incomes of the 100 customers are likely quite similar. If Bill Gates walks into the restaurant, the median income of the now 101 patrons will not shift by much at all, but the mean income will jump significantly, possibly by several million dollars.

²⁰McDonald, Michael D., and Robin E. Best. "Unfair partisan gerrymanders in politics and law: A diagnostic applied to six cases." *Election Law Journal* 14, no. 4 (2015): 312-330.

One drawback of the median-mean test is that it does not account for the natural clustering of voters that occurs in Pennsylvania and other states. This can be remedied by also computing the median-mean difference for the simulated districting plans that also consider for the geographic distribution of voters in the state. This allows us to make an apples-to-apples comparison that holds the political geography of the state constant. Figure 5 displays the results of the median-mean measure for the simulations (in grey) and the HB2146 plan (solid black line). The fact that the distribution of results from the simulations is mostly less than zero shows that the geography of Pennsylvania leads to a natural advantage for Republicans due to the dense clustering of Democratic voters in Philadelphia and Pittsburgh even when districts are drawn using strictly non-partisan criteria.

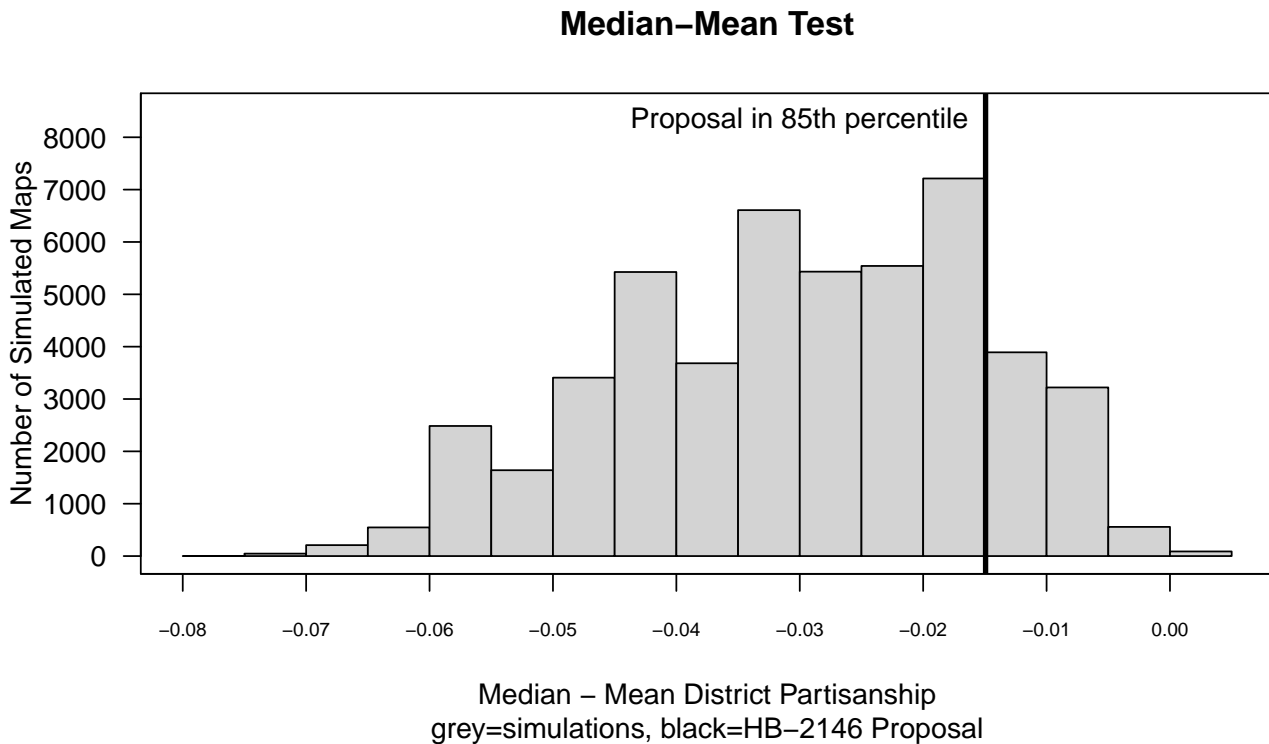
The solid black line shows the results of the HB2146 plan. There are two major points to take away from the results. First, without comparing to the simulations, the HB2146 plan is very nearly unbiased. The median-mean value for the HB2146 plan is -0.015, which is very close to zero.²¹ In other words, the median district and the mean district in the HB2146 plan are different by less than two percentage points. Second, when comparing the HB2146 plan to the simulations, the HB2146 plan is more favorable to Democratic voters than the vast majority of the simulated districting plans. The HB2146 plan has a median-mean value that is smaller (in absolute value) than 85 percent of the simulated plans. In other words, using only the non-partisan criteria described above to draw the simulated districts, 85% of them generate districts with a greater median-mean value, indicating a less efficient distribution of Democratic voters than the HB2146 plan contains.

5.6 Efficiency Gap

The efficiency gap is another common redistricting metric and is similar to the median-mean measure in that it looks for the degree to which a party's votes statewide are translated

²¹For example, the congressional plan that was challenged in the *League of Women Voters of Pennsylvania* case in 2017-2018 showed the congressional district plan had a median-mean difference of -0.059. The post-LWV case 2020 congressional plan had a median-mean difference of tktk.

Figure 5: Median-Mean Measure of HB2146 plan and Simulations



Note: Values calculated by taking the Democratic partisan index of the median district minus the mean of all 17 districts’ partisan indices. Negative numbers indicate a districting plan that favors Republicans and positive numbers indicate a slant in favor of Democrats. The grey histogram shows the results for each of the simulations. The black bar shows the results for the HB2146 plan. The proposal shows very little absolute bias (it is very close to zero) and is more favorable to Democrats than 85% of the simulated districts.

into seats in each district.²² A description of this measure provided by the Brennan Center for Justice summarizes it well: “[T]he efficiency gap counts the number of votes each party wastes in an election to determine whether either party enjoyed a systematic advantage in turning votes into seats. Any vote cast for a losing candidate is considered wasted, as are all the votes cast for a winning candidate in excess of the number needed to win.”²³ In other words, the ideal strategy for a political to maximize the impact of their voters is to distribute

²²McGhee, Eric. “Measuring efficiency in redistricting.” *Election Law Journal: Rules, Politics, and Policy* 16, no. 4 (2017): 417-442. Veomett, Ellen. “Efficiency gap, voter turnout, and the efficiency principle.” *Election Law Journal: Rules, Politics, and Policy* 17, no. 4 (2018): 249-263. Plener Cover, Benjamin. “Quantifying partisan gerrymandering: An evaluation of the efficiency gap proposal.” *Stan. L. Rev.* 70 (2018): 1131.

²³https://www.brennancenter.org/sites/default/files/legal-work/How_the_Efficiency_Gap_Standard_Works.pdf

them as evenly as possible across districts so as to win by a narrow margin in the district they win and lose by very large margins in the districts where they lose. Put another way, ‘win by a little, lose by a lot’ is the ideal strategy for a party to maximize their impact of their voters.²⁴

The Brennan Center provides a simple example of how the efficiency gap is calculated:

To understand how the efficiency gap works, consider a hypothetical state with 500 residents that is divided into five legislative districts, each with 100 voters. In the most recent election cycle, Democrats won Districts 1 and 2 by wide margins, while Republicans won Districts 3, 4, and 5 in closer races. Overall, Democratic candidates received 55 percent of the statewide vote but won just 40 percent of the legislative seats, while Republican candidates received 45 percent and won 60 percent of the seats. The table below shows the election results for each district.²⁵

District	D votes	R Votes	Result
1	75	25	D wins
2	60	40	D wins
3	43	57	R wins
4	48	52	R wins
5	49	51	R wins
Total:	275	225	

Once we have the election results, the first step is to consider the number of “wasted votes” in each district. Because the Republican candidate in this example lost in District 1, all 25 of the votes cast for that candidates are wasted. The Democratic candidate in District 1 won, but by 24 more votes than would be necessary (since all that is needed is 51 votes to win). Thus, there are 24 wasted Democratic votes in this district. Taking the difference indicates that there was a net of 1 Republican wasted vote in this district.

²⁴Of course, parties have other priorities and winning by a single vote might not be their ideal scenario in reality.

²⁵https://www.brennancenter.org/sites/default/files/legal-work/How_the_Efficiency_Gap_Standard_Works.pdf

The efficiency gap is then calculated as $\text{Efficiency Gap} = (\text{Total Democratic Wasted Votes} - \text{Total Republican Wasted Votes}) / \text{Total Votes}$. In order to account for uneven turnout across districts and elections, the efficiency gap formula can be re-expressed as the following equation: $\text{Efficiency Gap} = (\text{Seat Margin} - 50\%) - 2(\text{Vote Margin} - 50\%)$ where the seat margin is the fraction of seats won by Democrats minus 0.50 and the vote margin is the fraction of votes won by Democratic candidates statewide minus 0.50.²⁶

In this example and in Figure 5 I use the Democratic seat and vote margins which means that negative efficiency gap numbers indicate a districting plan that favors Republican voters and positive numbers indicate a plan that favors Democratic voters. As with the median-mean test, the efficiency gap has the drawback of not accounting for the natural clustering of Democratic voters in Pennsylvania and other states. However, as before I remedy this by also computing the efficiency gap for the simulated districting plans that also must account for the geographic distribution of voters in the state. This allows us to make an apples-to-apples comparison that accounts for political geography. Figure 6 displays the results of the efficiency-gap measure for the simulations (in grey) and the HB2146 plan (solid black line). The distribution of results from the simulations show that the geography of Pennsylvania leads to a naturally arising advantage for Republicans due to the dense clustering of Democratic voters in Philadelphia and Pittsburgh.²⁷

The solid black line shows the results of the HB2146 plan. There are two major points to take away from the results. First, the HB2146 plan is very nearly unbiased. The efficiency gap for the HB2146 plan is -0.02, which is very close to zero.²⁸ In other words, in the HB2146 plan Democratic votes are not much more likely than Republican votes to be “wasted” across the districts. Second, when comparing the HB2146 plan to the simulations, the HB2146

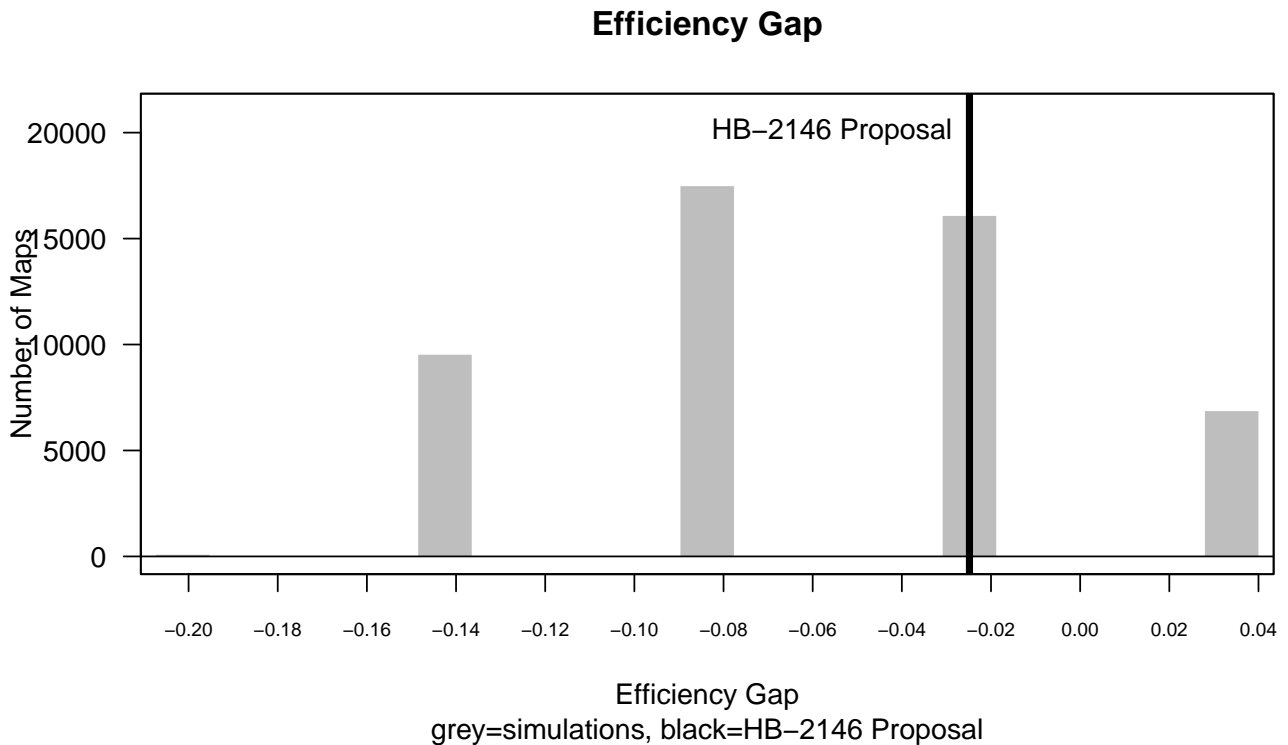
²⁶See McGhee, Eric. “Measuring efficiency in redistricting.” *Election Law Journal: Rules, Politics, and Policy* 16, no. 4 (2017): 417-442.

²⁷Because the efficiency gap is a measure of seat shares, it will be a ‘chunky’ measure with values for each seat won or lost in a plan, unlike the median-mean measure which is a more continuous measure that changes based on small changes in the margin of victory in each district.

²⁸For example, the congressional plan that was challenged in the *League of Women Voters of Pennsylvania* case in 2018 showed the congressional district plan had a pro-Republican efficiency gap of between -0.15 and -0.20. The post-LWV 2020 congressional map had an efficiency gap of tktk.

plan is more favorable to Democratic voters than the majority of the simulated districting plans. The HB2146 plan has an efficiency gap that is smaller (in absolute value) than all other outcomes in the simulated plans. While some of the simulated plans generate pro-Democratic efficiency gaps, they are larger in absolute terms and would be more biased than the HB2146 plan in favor of Democrats instead of the very slight lean towards Republicans exhibited in the HB2146 plan. In other words, using only the non-partisan criteria described above to draw the simulated districts, the HB2146 plan is in agreement with the least biased outcome in the simulations.

Figure 6: **Efficiency Gap Measure of HB2146 plan and Simulations**



Note: Distribution of efficiency gap among simulations shown in grey and the HB2146 plan shown as the solid black line. Negative values indicate plans that have a Republican advantage and positive values indicate plans that have a Democratic advantage. The HB2146 plan has a very small efficiency gap of -0.02 and is more favorable to Democratic voters than the majority of the non-partisan simulations, which have larger (more negative) efficiency gap values.

5.7 Expected Seats from Uniform Swing

Another measure of redistricting considers how a plan performs, on average, under a variety of different electoral environments. While the partisan index does this to a degree by averaging across a number of elections and years, I present another measure here where I report the results of applying a randomly chosen uniform swing to the election results in the HB2146 plan and the simulations. A uniform swing is simply a way of asking what would the election results in the districts look like if a certain percentage were added uniformly to each district in the plan.²⁹ In other words, a uniform swing of 1.3 points in the Democratic direction would simply add 0.013 to the partisan index of each district while a uniform swing of 2.5 points in the Republican direction would simply subtract 0.025 from the partisan index of each district. Of course, a swing of 1 points is more likely than a swing of 5 or 6 points as large wave elections are more rare than elections that perform closer to the average performance of each party. To account for this, I randomly apply 10,000 uniform swings to the simulations and the partisan index of the HB2146 plan and calculate the average of the number of seats that are held by Democrats in the HB2146 plan and each of the 50,000 simulations. The value of the uniform swing is chosen from a normal distribution that is centered at zero with a standard deviation of 3 percentage points.³⁰ Thus, small swings are more likely than large swings, but large swings of 3, 4, 5, and even 6 percentage points are possible, just as we occasionally observe large electoral waves in national politics. This gives us an idea of how a plan performs, on average, under a variety of potential electoral environments.

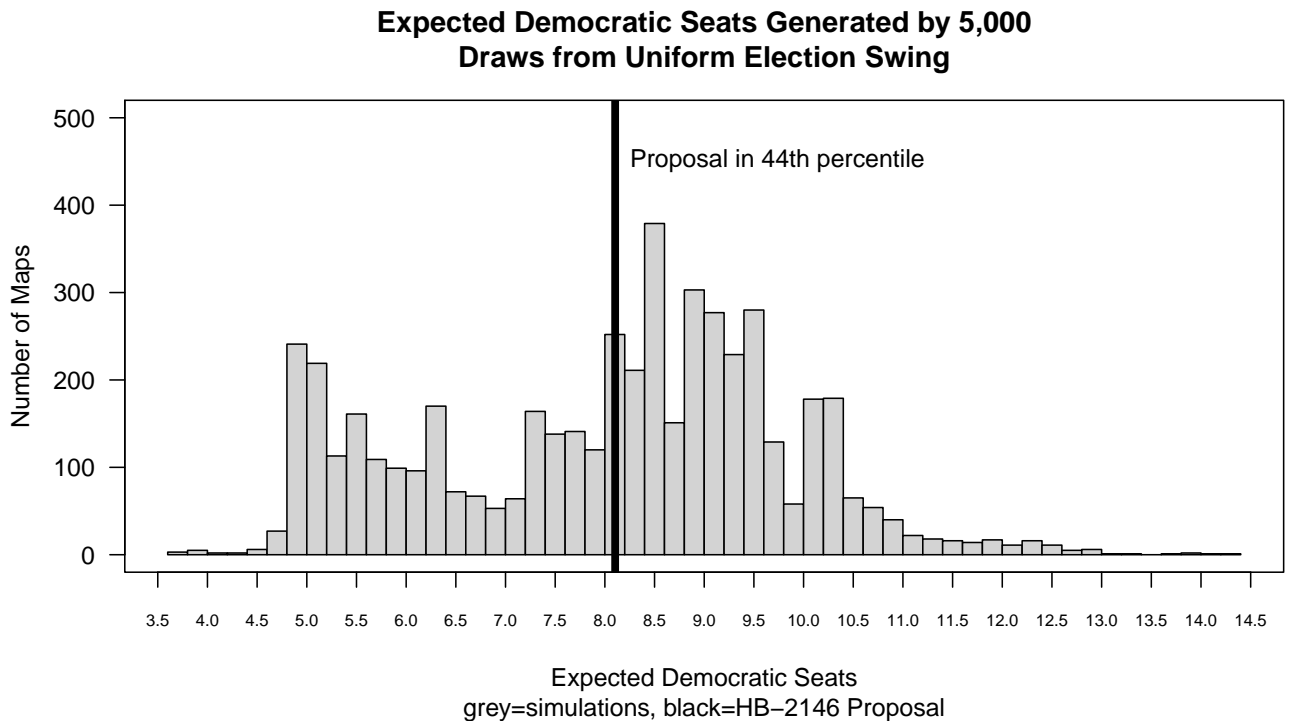
The result of this process is a measure of the expected number of Democratic seats that a plan will produce under a variety of different electoral conditions — some good for

²⁹See Jackman, Simon. "The predictive power of uniform swing." *PS: Political Science & Politics* 47, no. 2 (2014): 317-321 for a discussion of the concept of a uniform swing in elections. See Expert Report of Dr. Wesley Pegden in *Harper v. Hall*, Wake County North Carolina, No. 21 CVS 500085 for another example of using a uniform swing to calculate expected seat shares in redistricting.

³⁰3 percentage points is approximately the standard deviation of all of the statewide election results used in creating the 2012-2020 partisan index.

one party, some good for the other party, and some that are about average for both parties. Figure 7 shows the results of this process. The grey distribution shows the expected number of Democratic seats after applying the 5,000 draws from the uniform swing to the 50,000 simulations. Some of the simulated plans are very favorable to Republicans (with expected Democratic seat shares near 5) while other plans are very favorable to Democrats (with expected seat shares of 12 Democratic seats). The HB2146 plan, however, is nearly exactly in the middle of this distribution. The proposal generates an expected seats of 8.10 and is in the 44th percentile of the distribution of the simulated results. In other words, 44 percent of the simulations are worse for Democrats and 55 percent the simulations are better for Democrats compared to the HB2146 plan. The plan is positioned nearly in the middle of the non-partisan simulations on this measure.

Figure 7: **Expected Seats from Uniform Swing of HB2146 plan and Simulations**



Note: Distribution of expected seats in the HB2146 plan (black line) and the simulations (grey distribution) after applying 5,000 uniform swings to the partisan index. The value of each uniform swing is chosen from a normal distribution that is centered at zero with a standard deviation of 3 percentage points.

5.8 Considerations of Race

Table 3 shows the non-Hispanic Black voting age population percent of each district and the non-White voting age population percent of each district in the HB2146 plan. The districts are ordered from lowest to highest percentage in each category. The HB2146 plan contains one district (District 3) in Philadelphia that is just shy of being majority Black with a 49.82% non-Hispanic Black voting age population. Additionally, District 2 has a 59.60% non-White voting age population. District 15 has a 32.5% non-White voting age population.

Table 2: District-by-District Racial Composition of HB2146 plan

District rank	District Number	NHBVAP	District Number	Non-White
17	12	2.1%	14	7.2%
16	9	2.3%	12	9.0%
15	14	2.4%	16	10.8%
14	11	3.3%	9	11.6%
13	1	3.8%	17	12.2%
12	17	3.9%	13	13.8%
11	16	3.9%	1	18.1%
10	13	4.9%	11	18.1%
9	7	5.2%	8	18.3%
8	6	5.3%	10	20.0%
7	8	5.4%	4	25.6%
6	10	6.8%	6	26.4%
5	4	9.6%	7	27.5%
4	15	17.5%	15	28.3%
3	5	19.2%	5	32.8%
2	2	21.9%	2	57.1%
1	3	52.2%	3	68.6%

One potential criticism that some may raise of the simulations is that they do not take into account racial data when drawing district boundaries, and that once this constraint is imposed it may shift the partisan composition of the remaining districts in a way that the distribution of simulations may look different when racial factors are explicitly considered. This criticism, however, is unwarranted, as the explicit consideration of race, if anything, actually brings the distribution of simulations more in line with the HB2146 plan.

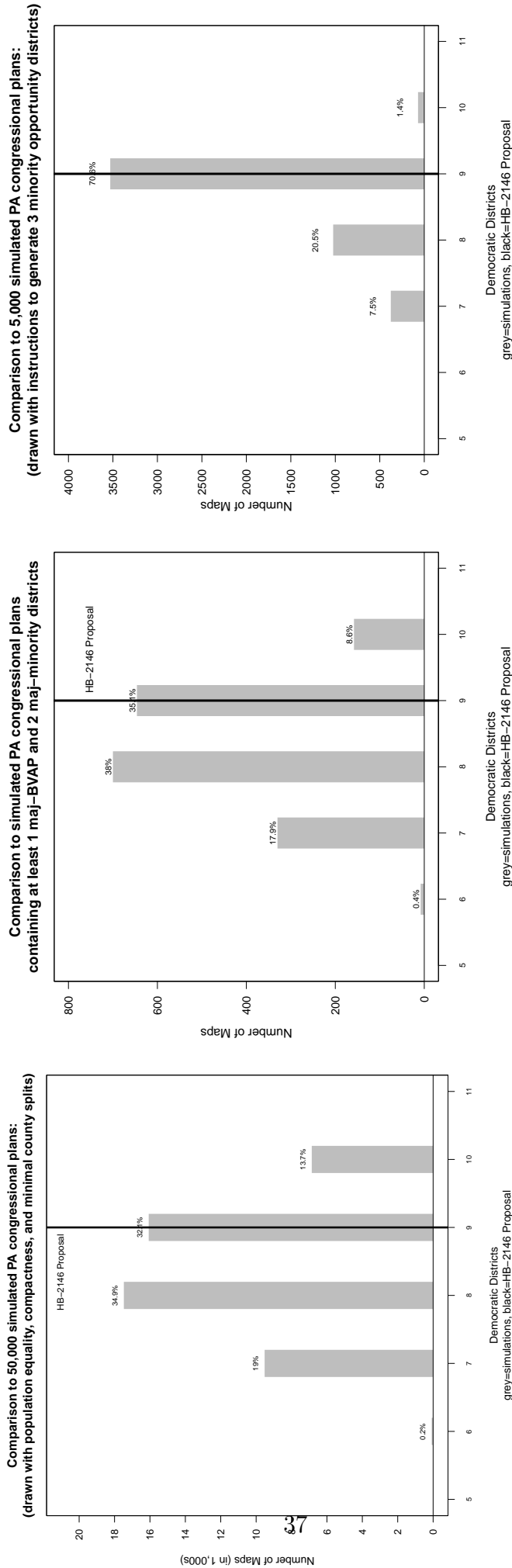
Figure 8 below shows this. The left panel of Figure 8 is the same as Figure 3 in

the earlier section of this report and shows the partisan distribution of the simulations and the location of the HB2146 plan. The middle panel of the figure subsets the race-blind simulations to the 1,842 plans that, while race was not explicitly considered, nevertheless contain both a majority-black district as well as an additional majority-minority district.³¹ Comparing the two panels shows that the distributions are extremely similar. The probability of a 9-D map, which is what the HB2146 plan generates, is nearly identical across the two sets of simulations (35.1% in the race-blind simulations, 32.1% in the race-filtered simulations).

The right panel in Figure 8 is the distribution of Democratic-leaning seats derived from a separate set of simulations that explicitly consider race. In this race-conscious set of simulations I instruct the model to ensure that every plan contains three districts that have at least a 35% non-white voting age population. These districts are often referred to as minority opportunity districts. I choose to instruct the model to generate three of these districts as it is similar to the number of minority opportunity districts generated by the HB2146 plan and the plans put forward recently by Governor Wolf. Other than the use of racial data to inform the construction of minority opportunity districts, the other parameters and data used in the two sets of simulations are identical in every other way. The right panel of Figure 8 shows that the results of the race-conscious simulations is a general reduction in the variation in the number of Democratic-leaning seats generated by the simulations. The probability of a 7-D or 8-D map has decreased substantially while there are no simulations that generate a 6-D map and only 1.4% of the simulations generate a 10-D map. A map with 9 Democratic-leaning districts is now the most common outcome with 70.6% of the simulations generating this result.

³¹While a reduction from 50,000 to 1,842 simulated plans is substantial, 1,842 is still a large number of plans to compare against and is larger than many simulations presented in other expert reports in recent redistricting litigation and is still large enough to provide a sufficient sample of maps to compare to.

Figure 8: Seats Carried by Democrats in Race-Blind and Race-Conscious Simulations



Note: The left panel contains the results of the 50,000 simulations that do not consider race when districts are drawn. The middle panel considers the 1,832 districts that, even though they were drawn without any racial data, nevertheless contain a majority Black district and an additional majority minority district. The right panel is the distribution from 5,000 simulations that are drawn with racial data and instructions to generate three districts with at least a 35% minority voting age population.

6 Conclusion

Based on the evidence and analysis presented above, my opinions regarding the HB2146 plan for congressional districts in Pennsylvania can be summarized as follows:

- The contemporary political geography of Pennsylvania is such that Democratic majorities are geographically clustered in the largest cities of the state while Republican voters dominate the suburban and rural portions of the state.
- This geographic clustering in cities puts the Democratic Party at a natural disadvantage when single-member districts are drawn. Specifically, districts drawn to be contiguous, compact, and contain minimal county and municipal splits will naturally create several districts in the Philadelphia and Pittsburgh areas that contain substantial Democratic majorities with many “wasted votes.”
- Based on a comparison between the HB2146 plan, and a set of 50,000 simulated maps, the HB2146 plan is a fair plan with no evidence of partisan gerrymandering across a number of different measures used to assess the fairness of a map.
- Based on an index of statewide elections from 2012-2020, the HB2146 plan generates nine Democratic-leaning districts and eight Republican-leaning districts.
- Based on the same index of statewide elections from 2012-2020, six of the districts in the HB2146 plan will likely be competitive with candidates from both parties having a realistic possibility of winning the seats. Five of these competitive districts are *extremely* competitive, with a partisan index within two percentage points of an even 50/50 split.
- Compared to a second set of simulations that explicitly consider the creation of minority opportunity districts, the HB2146 plan is similarly unbiased. The race-conscious simulations reduce the variation in Democratic-leaning districts substantially, mak-

ing nine Democratic-leaning districts the overwhelmingly most likely outcome in the simulations.

- Based on these commonly-used measures of redistricting fairness, the HB2146 plan is unbiased, and when compared to the simulations on these same metrics is balanced between occasionally having a slight Republican benefit and occasionally providing a slight benefit to Democratic voters.

I am being compensated for my time in preparing this report at an hourly rate of \$400/hour. My compensation is in no way contingent on the conclusions reached as a result of my analysis.

Michael Jay Barber

A handwritten signature in black ink, appearing to read "Michael Barber". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Barber".

7 Appendix A: Additional Statistics

Table 3: District-by-District Compactness - Polsby-Popper

District rank	District Number	Polsby-Popper
17	6	0.20
16	2	0.23
15	3	0.24
14	14	0.24
13	17	0.24
12	4	0.25
11	5	0.26
10	13	0.29
9	15	0.29
8	9	0.30
7	8	0.35
6	7	0.37
5	1	0.40
4	12	0.42
3	10	0.45
2	16	0.49
1	11	0.50

Split Municipalities:

- Philadelphia*
- Stowe Township, Allegheny County
- Centre Township, Berks County
- Summit Township, Butler County
- East Hanover Township, Butler County
- Stonycreek Township, Cambria County
- West Whiteland Township, Chester County
- Pine Creek Township, Clinton County
- Silver Spring Township, Cumberland County
- Stroud Township, Dauphin County
- Luzerne Borough, Luzerne County
- Horsham Township, Montgomery County
- Buffalo Township, Union County
- Amwell Township, Washington County
- Independence Township, Washington County
- North Franklin Township, Washington County

*Population of the city is larger than a single congressional district and therefore will need to be split between multiple districts.

Split Counties:

- Allegheny County*
- Berks County
- Butler County
- Cambria County
- Chester County
- Clinton County
- Cumberland County
- Dauphin County
- Luzerne County
- Monroe County
- Montgomery County*
- Philadelphia County*
- Snyder County
- Union County
- Washington County

*Population of the county is larger than a single congressional district and therefore will need to be split between multiple districts.

Number of Democratic-leaning Districts using Alternative Election Indices:

- All 2012-2020 statewide elections: 9
- All 2014-2020 statewide elections: 8
- 2016-2020 index used by Dave's Redistricting: 9
- Index used by Planscore.com: 8

Appendix B: Curriculum Vitae

Michael Jay Barber

CONTACT INFORMATION

Brigham Young University
Department of Political Science
724 KMBL
Provo, UT 84602

barber@byu.edu
<http://michaeljaybarber.com>
Ph: (801) 422-7492

ACADEMIC APPOINTMENTS

Brigham Young University, Provo, UT

August 2020 - present Associate Professor, Department of Political Science
2014 - July 2020 Assistant Professor, Department of Political Science
2014 - present Faculty Scholar, Center for the Study of Elections and Democracy

EDUCATION

Princeton University Department of Politics, Princeton, NJ

Ph.D., Politics, July 2014

- Advisors: Brandice Canes-Wrone, Nolan McCarty, and Kosuke Imai
- Dissertation: “Buying Representation: the Incentives, Ideology, and Influence of Campaign Contributions on American Politics”
- 2015 Carl Albert Award for Best Dissertation, Legislative Studies Section, American Political Science Association (APSA)

M.A., Politics, December 2011

Brigham Young University, Provo, UT

B.A., International Relations - Political Economy Focus, April, 2008

- *Cum Laude*

RESEARCH INTERESTS

American politics, congressional polarization, political ideology, campaign finance, survey research

PUBLICATIONS

19. **“Ideological Disagreement and Pre-emption in Municipal Policymaking”**
with Adam Dynes
Forthcoming at *American Journal of Political Science*
18. **“Comparing Campaign Finance and Vote Based Measures of Ideology”**
Forthcoming at *Journal of Politics*
17. **“The Participatory and Partisan Impacts of Mandatory Vote-by-Mail”**, with John Holbein
Science Advances, 2020. Vol. 6, no. 35, DOI: 10.1126/sciadv.abc7685
16. **“Issue Politicization and Interest Group Campaign Contribution Strategies”**, with Mandi Eatough
Journal of Politics, 2020. Vol. 82: No. 3, pp. 1008-1025

15. **“Campaign Contributions and Donors’ Policy Agreement with Presidential Candidates”**, with Brandice Canes-Wrone and Sharece Thrower
Presidential Studies Quarterly, 2019, 49 (4) 770–797
14. **“Conservatism in the Era of Trump”**, with Jeremy Pope
Perspectives on Politics, 2019, 17 (3) 719–736
13. **“Legislative Constraints on Executive Unilateralism in Separation of Powers Systems”**, with Alex Bolton and Sharece Thrower
Legislative Studies Quarterly, 2019, 44 (3) 515–548
Awarded the Jewell-Loewenberg Award for best article in the area of subnational politics published in *Legislative Studies Quarterly* in 2019
12. **“Electoral Competitiveness and Legislative Productivity”**, with Soren Schmidt
American Politics Research, 2019, 47 (4) 683–708
11. **“Does Party Trump Ideology? Disentangling Party and Ideology in America”**, with Jeremy Pope
American Political Science Review, 2019, 113 (1) 38–54
10. **“The Evolution of National Constitutions”**, with Scott Abramson
Quarterly Journal of Political Science, 2019, 14 (1) 89–114
9. **“Who is Ideological? Measuring Ideological Responses to Policy Questions in the American Public”**, with Jeremy Pope
The Forum: A Journal of Applied Research in Contemporary Politics, 2018, 16 (1) 97–122
8. **“Status Quo Bias in Ballot Wording”**, with David Gordon, Ryan Hill, and Joe Price
The Journal of Experimental Political Science, 2017, 4 (2) 151–160.
7. **“Ideologically Sophisticated Donors: Which Candidates Do Individual Contributors Finance?”**, with Brandice Canes-Wrone and Sharece Thrower
American Journal of Political Science, 2017, 61 (2) 271–288.
6. **“Gender Inequalities in Campaign Finance: A Regression Discontinuity Design”**, with Daniel Butler and Jessica Preece
Quarterly Journal of Political Science, 2016, Vol. 11, No. 2: 219–248.
5. **“Representing the Preferences of Donors, Partisans, and Voters in the U.S. Senate”**
Public Opinion Quarterly, 2016, 80: 225–249.
4. **“Donation Motivations: Testing Theories of Access and Ideology”**
Political Research Quarterly, 2016, 69 (1) 148–160.
3. **“Ideological Donors, Contribution Limits, and the Polarization of State Legislatures”**
Journal of Politics, 2016, 78 (1) 296–310.
2. **“Online Polls and Registration Based Sampling: A New Method for Pre-Election Polling”** with Quin Monson, Kelly Patterson and Chris Mann.
Political Analysis 2014, 22 (3) 321–335.
1. **“Causes and Consequences of Political Polarization”** In *Negotiating Agreement in Politics*. Jane Mansbridge and Cathie Jo Martin, eds., Washington, DC: American Political Science Association: 19–53. with Nolan McCarty. 2013.
 - Reprinted in *Solutions to Political Polarization in America*, Cambridge University Press. Nate Persily, eds. 2015
 - Reprinted in *Political Negotiation: A Handbook*, Brookings Institution Press. Jane Mansbridge and Cathie Jo Martin, eds. 2015

AVAILABLE
WORKING PAPERS

“Misclassification and Bias in Predictions of Individual Ethnicity from Administrative Records” (Revise and Resubmit at *American Political Science Review*)

“Taking Cues When You Don’t Care: Issue Importance and Partisan Cue Taking”
with Jeremy Pope (Revise and Resubmit)

“A Revolution of Rights in American Founding Documents”
with Scott Abramson and Jeremy Pope (Conditionally Accepted)

“410 Million Voting Records Show the Distribution of Turnout in America Today”
with John Holbein (Revise and Resubmit)

“Partisanship and Trolleyology”
with Ryan Davis (Under Review)

“Who’s the Partisan: Are Issues or Groups More Important to Partisanship?”
with Jeremy Pope (Revise and Resubmit)

“Race and Realignment in American Politics”
with Jeremy Pope (Revise and Resubmit)

“The Policy Preferences of Donors and Voters”

“Estimating Neighborhood Effects on Turnout from Geocoded Voter Registration Records.”
with Kosuke Imai

“Super PAC Contributions in Congressional Elections”

WORKS IN
PROGRESS

“Collaborative Study of Democracy and Politics”
with Brandice Canes-Wrone, Gregory Huber, and Joshua Clinton

“Preferences for Representational Styles in the American Public”
with Ryan Davis and Adam Dynes

“Representation and Issue Congruence in Congress”
with Taylor Petersen

“Education, Income, and the Vote for Trump”
with Edie Ellison

INVITED
PRESENTATIONS

“Are Mormons Breaking Up with Republicanism? The Unique Political Behavior of Mormons in the 2016 Presidential Election”

- Ivy League LDS Student Association Conference - Princeton University, November 2018, Princeton, NJ

“Issue Politicization and Access-Oriented Giving: A Theory of PAC Contribution Behavior”

- Vanderbilt University, May 2017, Nashville, TN

“Lost in Issue Space? Measuring Levels of Ideology in the American Public”

- Yale University, April 2016, New Haven, CT

“The Incentives, Ideology, and Influence of Campaign Donors in American Politics”

- University of Oklahoma, April 2016, Norman, OK

“Lost in Issue Space? Measuring Levels of Ideology in the American Public”

- University of Wisconsin - Madison, February 2016, Madison, WI

“Polarization and Campaign Contributors: Motivations, Ideology, and Policy”

- Hewlett Foundation Conference on Lobbying and Campaign Finance, October 2014, Palo Alto, CA

“Ideological Donors, Contribution Limits, and the Polarization of State Legislatures”

- Bipartisan Policy Center Meeting on Party Polarization and Campaign Finance, September 2014, Washington, DC

“Representing the Preferences of Donors, Partisans, and Voters in the U.S. Senate”

- Yale Center for the Study of American Politics Conference, May 2014, New Haven, CT

CONFERENCE
PRESENTATIONS

Washington D.C. Political Economy Conference (PECO):

- 2017 discussant

American Political Science Association (APSA) Annual Meeting:

- 2014 participant and discussant, 2015 participant, 2016 participant, 2017 participant, 2018 participant

Midwest Political Science Association (MPSA) Annual Meeting:

- 2015 participant and discussant, 2016 participant and discussant, 2018 participant

Southern Political Science Association (SPSA) Annual Meeting:

- 2015 participant and discussant, 2016 participant and discussant, 2017 participant

TEACHING
EXPERIENCE

Poli 315: Congress and the Legislative Process

- Fall 2014, Winter 2015, Fall 2015, Winter 2016, Summer 2017

Poli 328: Quantitative Analysis

- Winter 2017, Fall 2017, Fall 2019, Winter 2020, Fall 2020, Winter 2021

Poli 410: Undergraduate Research Seminar in American Politics

- Fall 2014, Winter 2015, Fall 2015, Winter 2016, Summer 2017

AWARDS AND
GRANTS

- 2019 BYU Mentored Environment Grant (MEG), American Ideology Project, \$30,000
- 2017 BYU Political Science Teacher of the Year Award
- 2017 BYU Mentored Environment Grant (MEG), Funding American Democracy Project, \$20,000
- 2016 BYU Political Science Department, Political Ideology and President Trump (with Jeremy Pope), \$7,500
- 2016 BYU Office of Research and Creative Activities (ORCA) Student Mentored Grant x 3
- Hayden Galloway, Jennica Peterson, Rebecca Shuel
- 2015 BYU Office of Research and Creative Activities (ORCA) Student Mentored Grant x 3
- Michael-Sean Covey, Hayden Galloway, Sean Stephenson
- 2015 BYU Student Experiential Learning Grant, American Founding Comparative Constitutions Project (with Jeremy Pope), \$9,000
- 2015 BYU Social Science College Research Grant, \$5,000
- 2014 BYU Political Science Department, 2014 Washington DC Mayoral Pre-Election Poll (with Quin Monson and Kelly Patterson), \$3,000
- 2014 BYU Social Science College Award, 2014 Washington DC Mayoral Pre-Election Poll (with Quin Monson and Kelly Patterson), \$3,000
- 2014 BYU Center for the Study of Elections and Democracy, 2014 Washington DC Mayoral Pre-Election Poll (with Quin Monson and Kelly Patterson), \$2,000
- 2012 Princeton Center for the Study of Democratic Politics Dissertation Improvement Grant, \$5,000
- 2011 Princeton Mamdouha S. Bobst Center for Peace and Justice Dissertation Research Grant, \$5,000
- 2011 Princeton Political Economy Research Grant, \$1,500

OTHER SCHOLARLY
ACTIVITIES

- Expert Witness in Nancy Carola Jacobson, et al., Plaintiffs, vs. Laurel M. Lee, et al., Defendants. Case No. 4:18-cv-00262 MW-CAS (U.S. District Court for the Northern District of Florida)
- Expert Witness in Common Cause, et al., Plaintiffs, vs. LEWIS, et al., Defendants. Case No. 18-CVS-14001 (Wake County, North Carolina)
- Expert Witness in Kelvin Jones, et al., Plaintiffs, v. Ron DeSantis, et al., Defendants, Consolidated Case No. 4:19-cv-300 (U.S. District Court for the Northern District of Florida)
- Expert Witness in Community Success Initiative, et al., Plaintiffs, v. Timothy K. Moore, et al., Defendants, Case No. 19-cv-15941 (Wake County, North Carolina)
- Expert Witness in Richard Rose et al., Plaintiffs, v. Brad Raffensperger, Defendant, Civil Action No. 1:20-cv-02921-SDG (U.S. District Court for the Northern District of Georgia)

Georgia Coalition for the People’s Agenda, Inc., et. al., Plaintiffs, v. Brad Raffensberger, Defendant. Civil Action No. 1:18-cv-04727-ELR (U.S. District Court for the Northern District of Georgia)

Expert Witness in Alabama, et al., Plaintiffs, v. United States Department of Commerce; Gina Raimondo, et al., Defendants. Case No. CASE No. 3:21-cv-00211-RAH-ECM-KCN (U.S. District Court for the Middle District of Alabama Eastern Division)

Expert Witness in League of Women Voters of Ohio, et al., Relators, v. Ohio Redistricting Commission, et al., Respondents. Case No. 2021-1193 (Supreme Court of Ohio)

Expert Witness in Regina Adams, et al., Relators, v. Governor Mike DeWine, et al., Respondents. Case No. 2021-1428 (Supreme Court of Ohio)

Expert Witness in Rebecca Harper, et al., Plaintiffs, v. Representative Destin Hall, et al., Defendants (Consolidated Case). Case No. 21 CVS 500085 (Wake County, North Carolina)

ADDITIONAL
TRAINING

EITM 2012 at Princeton University - Participant and Graduate Student Coordinator

COMPUTER
SKILLS

Statistical Programs: R, Stata, SPSS, parallel computing

Updated January 7, 2022

EXHIBIT I

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 464 M.D. 2021

Carol Ann Carter; Monica Parrilla; Rebecca Poyourow; William Tung; Roseanne Milazzo; Burt Siegel; Susan Cassanelli; Lee Cassanelli; Lynn Wachman; Michael Guttman; Maya Fonkeu; Brady Hill; Mary Ellen Balchunis; Tom DeWall; Stephanie McNulty; and Janet Temin,

Petitioners,

vs.

Leigh Chapman, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

No. 465 M.D. 2021

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

Petitioners,

vs.

Leigh Chapman, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

AFFIDAVIT OF BILL SCHALLER

I, Bill Schaller, depose and state the following:

1. I am over eighteen years of age and I have personal knowledge of the matters set forth herein.
2. I am employed as Director of Republican Reapportionment Department for the Republican Caucus of the Pennsylvania House of Representatives, and have been employed by the Pennsylvania House of Representatives for 26.5 years.
3. As part of my responsibilities, I am familiar with the congressional redistricting plan passed by the Pennsylvania House of Representatives, House Bill 2146, in the 2021-2022 Session thereof.
4. A true, accurate, and complete rendering of the plan is attached hereto as Exhibit 1.
5. Our office received from the Legislative Data Processing Center (the “LDPC”) of the Pennsylvania General Assembly a report that analyzes House Bill 2146. This report was prepared in the ordinary course of business by a person with knowledge, and it is reliable. A true, accurate, and complete copy of the LDPC report is attached hereto as Exhibit 2.
6. A staff member under my direct supervision used our Autobound Edge GIS software to produce a report of the compactness of the House Bill 2146

congressional plan. This report was prepared in the ordinary course of business by a person with knowledge, and it is reliable. A true, accurate, and complete copy of this report is attached hereto as Exhibit 3.

7. A staff member under my direct supervision used our Autobound Edge GIS software to produce a report of the precinct split population breakdowns by district in the House Bill 2146 plan. This report was prepared in the ordinary course of business by a person with knowledge, and it is reliable. A true, accurate, and complete copy of this report is attached hereto as Exhibit 4.

I hereby verify that the foregoing is true and correct to the best of my knowledge, information, and belief. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

January 24, 2022
Harrisburg, PA
122042.000003 4889-9930-6763


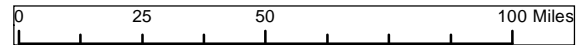
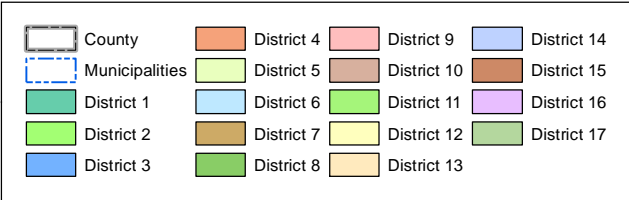
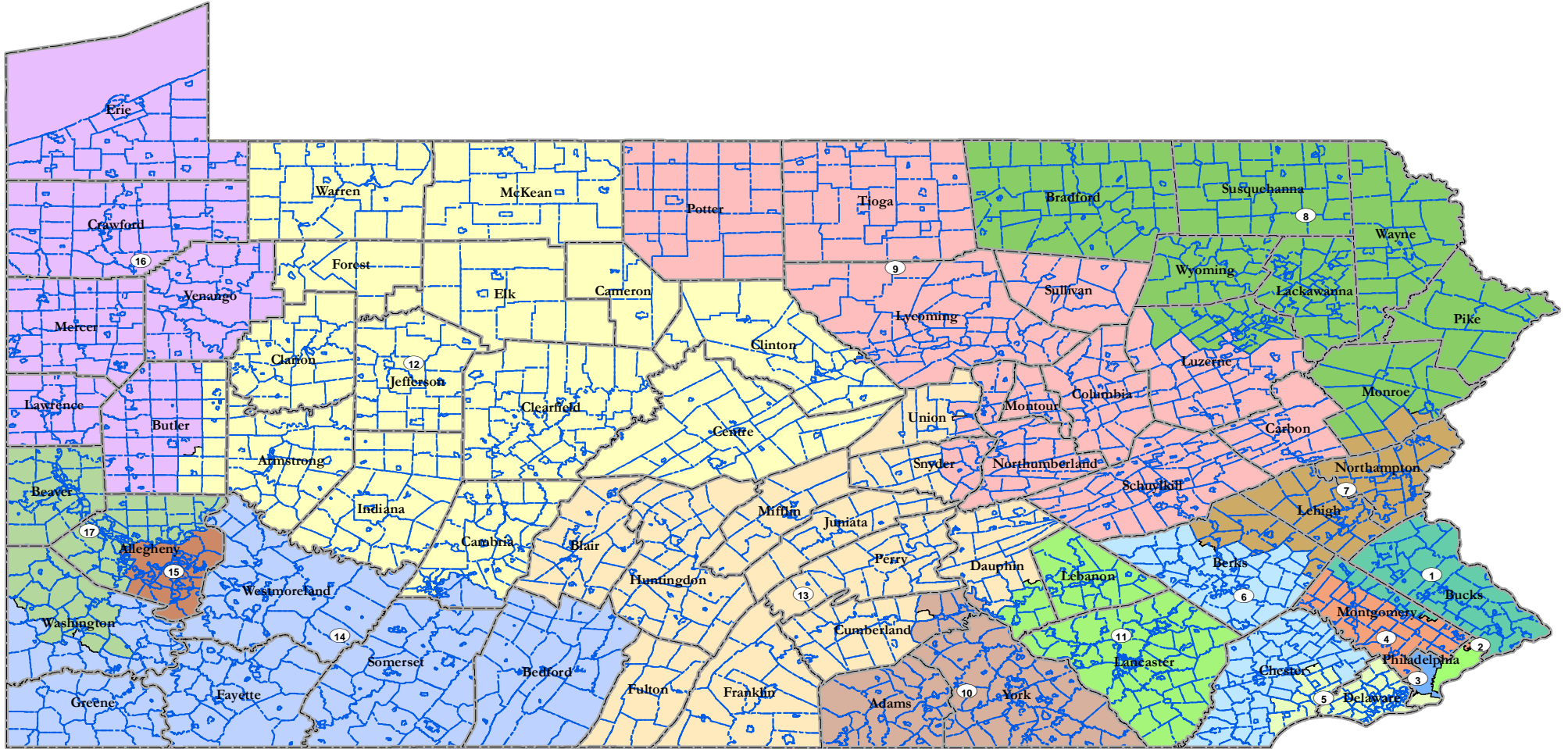

Bill Schaller

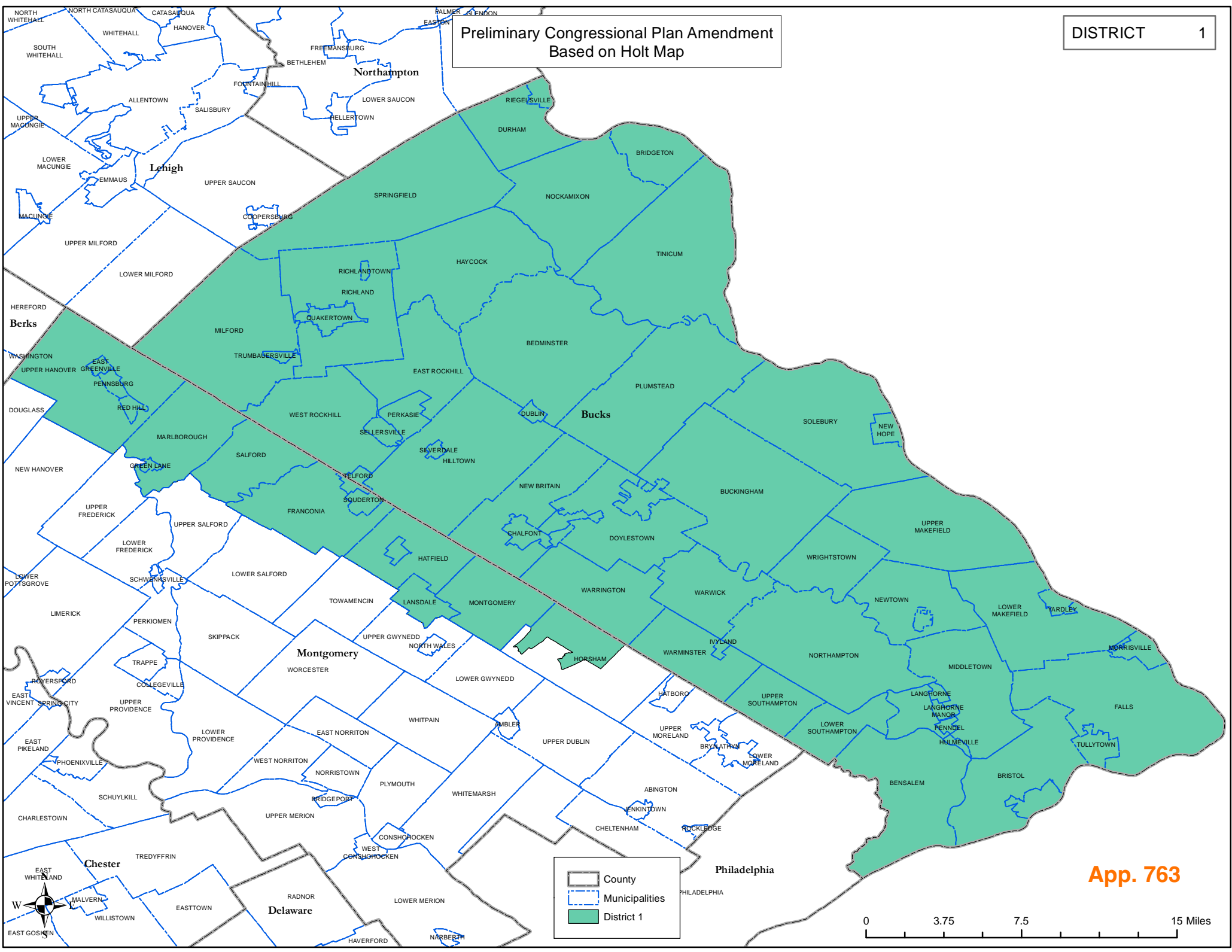
Exhibit 1

Preliminary Congressional Plan Amendment
Based on Holt Map



Preliminary Congressional Plan Amendment
Based on Holt Map

DISTRICT 1

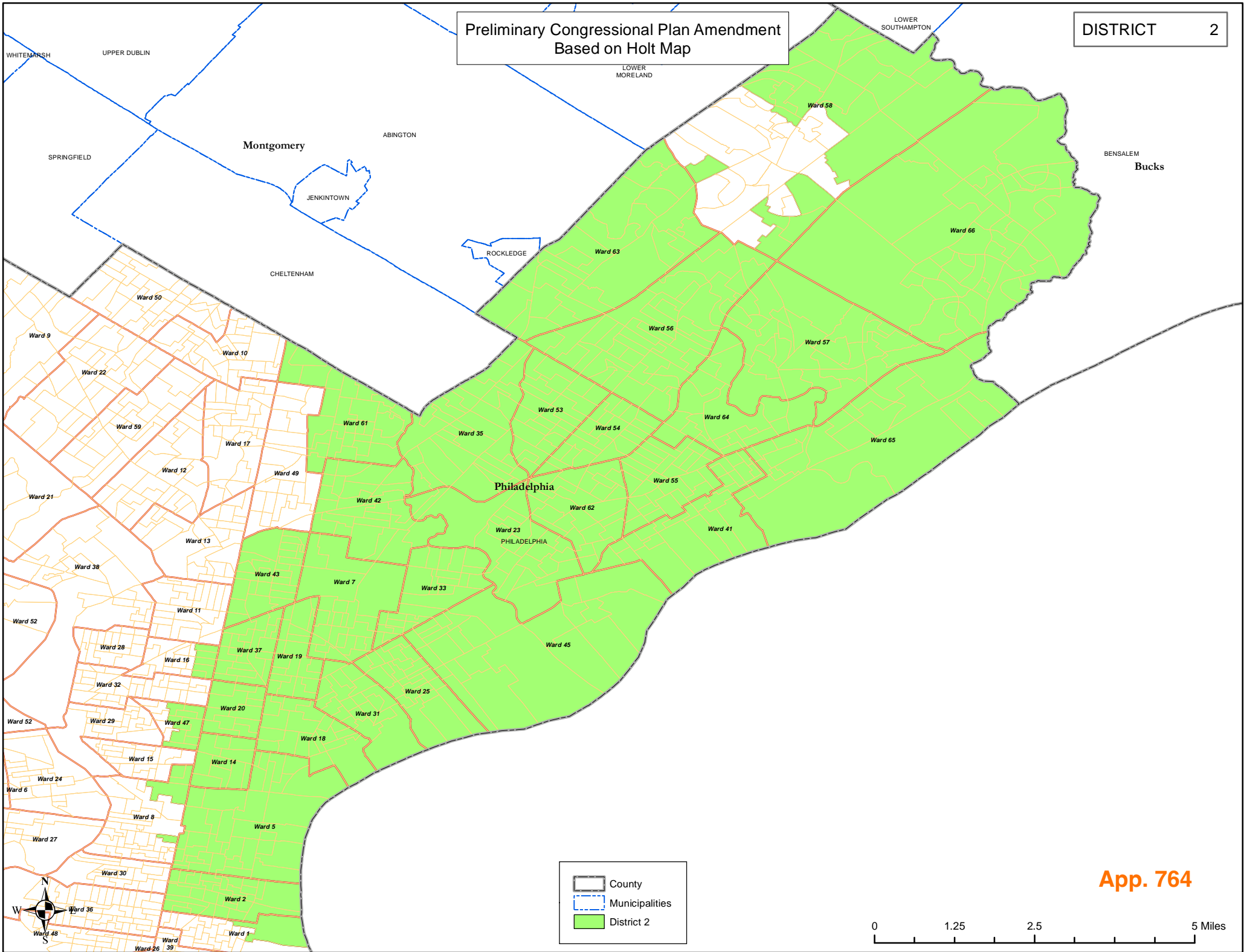


App. 763

0 3.75 7.5 15 Miles

Preliminary Congressional Plan Amendment
Based on Holt Map

DISTRICT 2



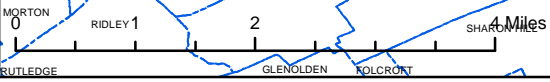
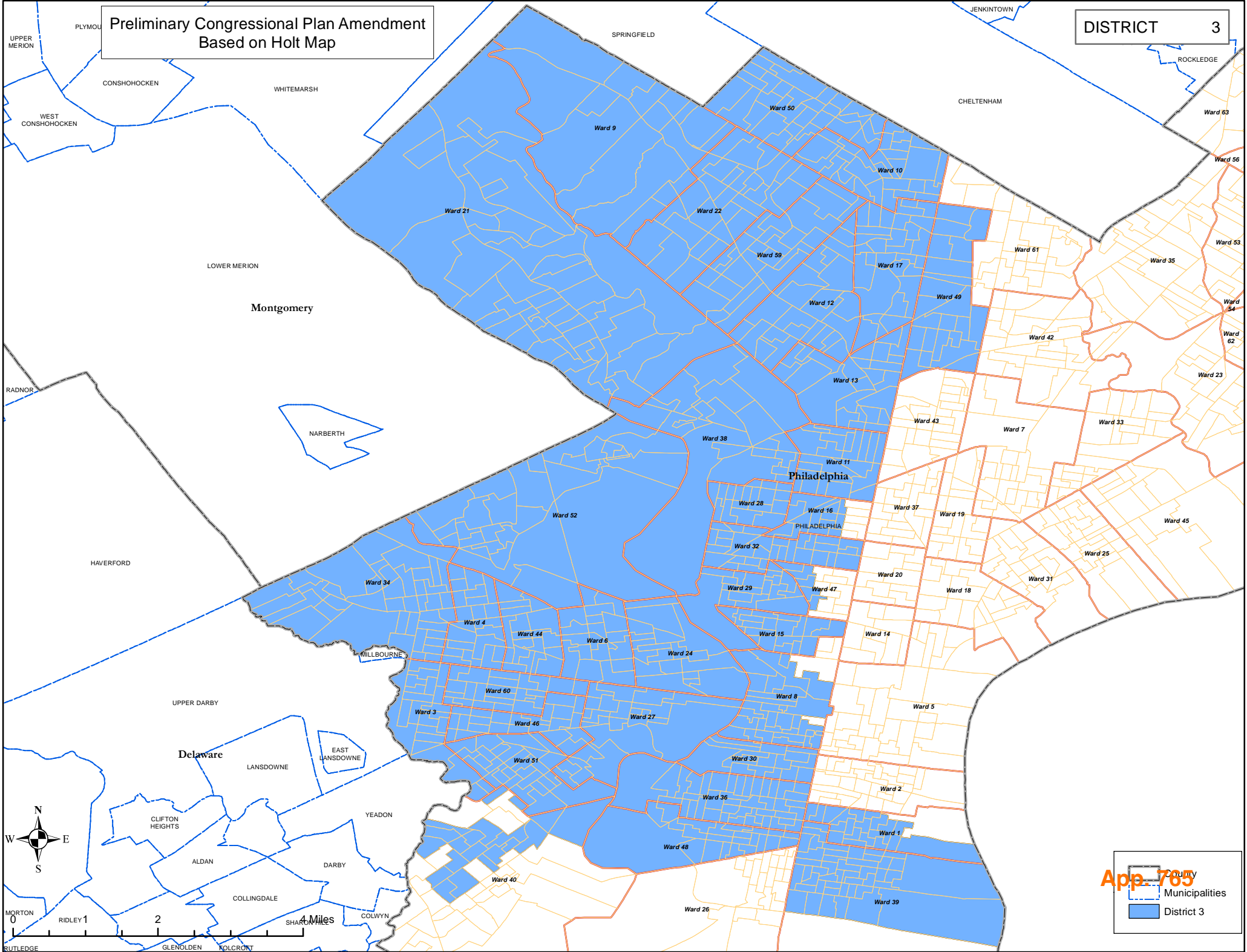
App. 764

- County
- Municipalities
- District 2

0 1.25 2.5 5 Miles

Preliminary Congressional Plan Amendment Based on Holt Map

DISTRICT 3

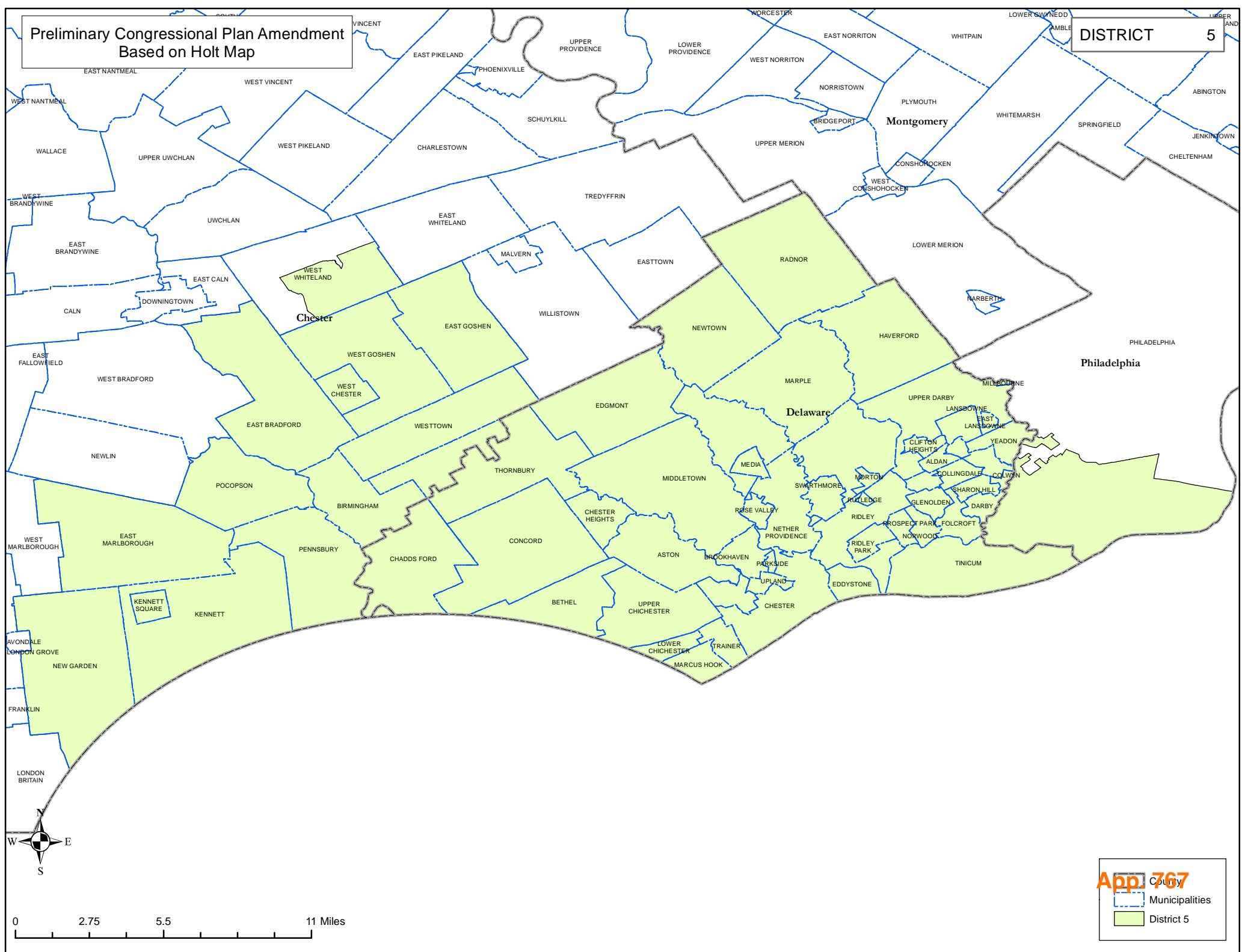


App 785

- Municipalities
- District 3

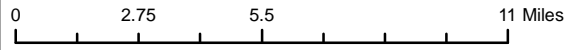
Preliminary Congressional Plan Amendment Based on Holt Map

DISTRICT 5



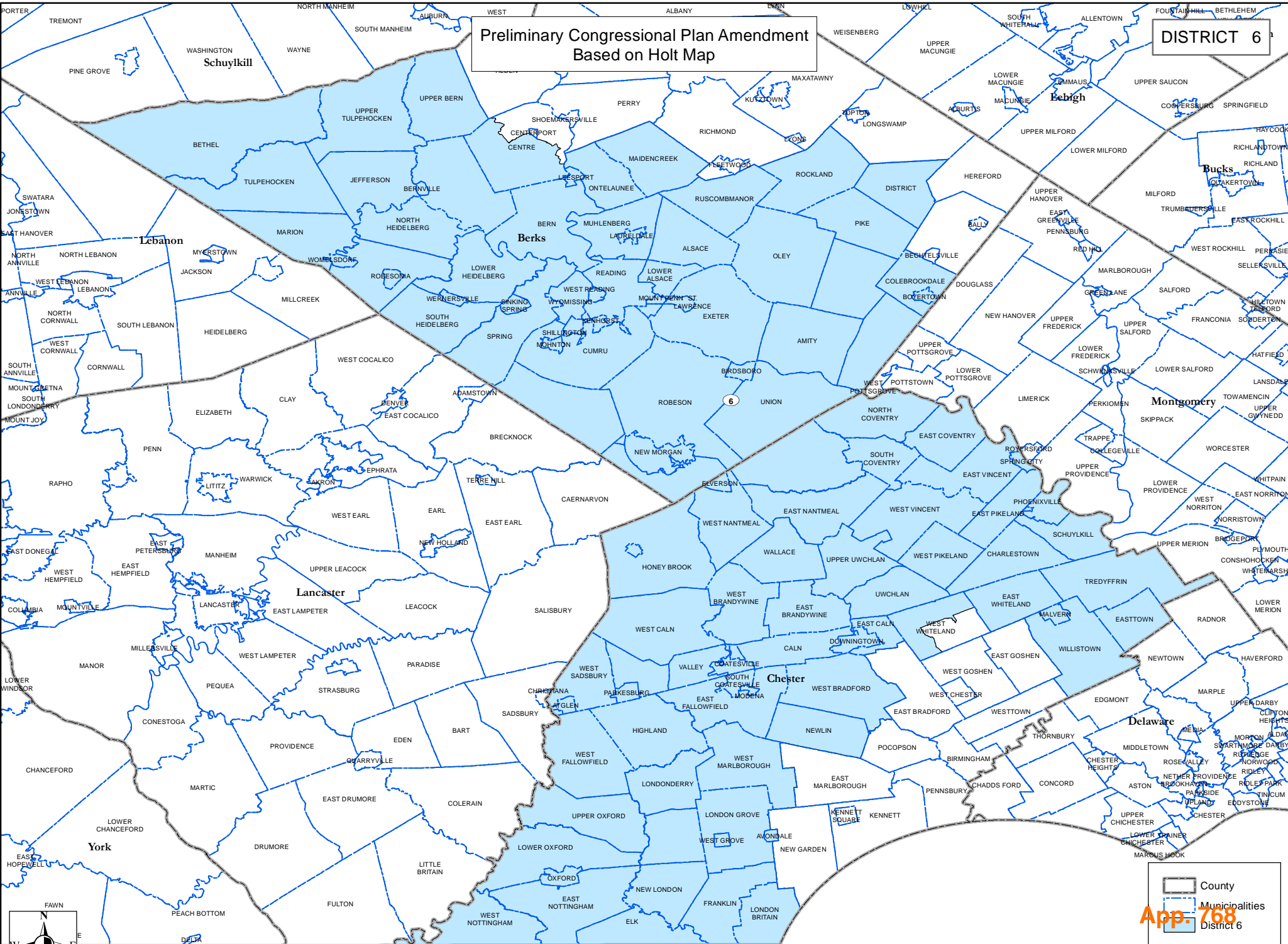
App. 767
County

- Municipalities
- District 5



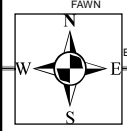
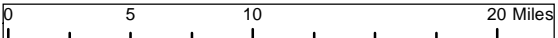
Preliminary Congressional Plan Amendment Based on Holt Map

DISTRICT 6



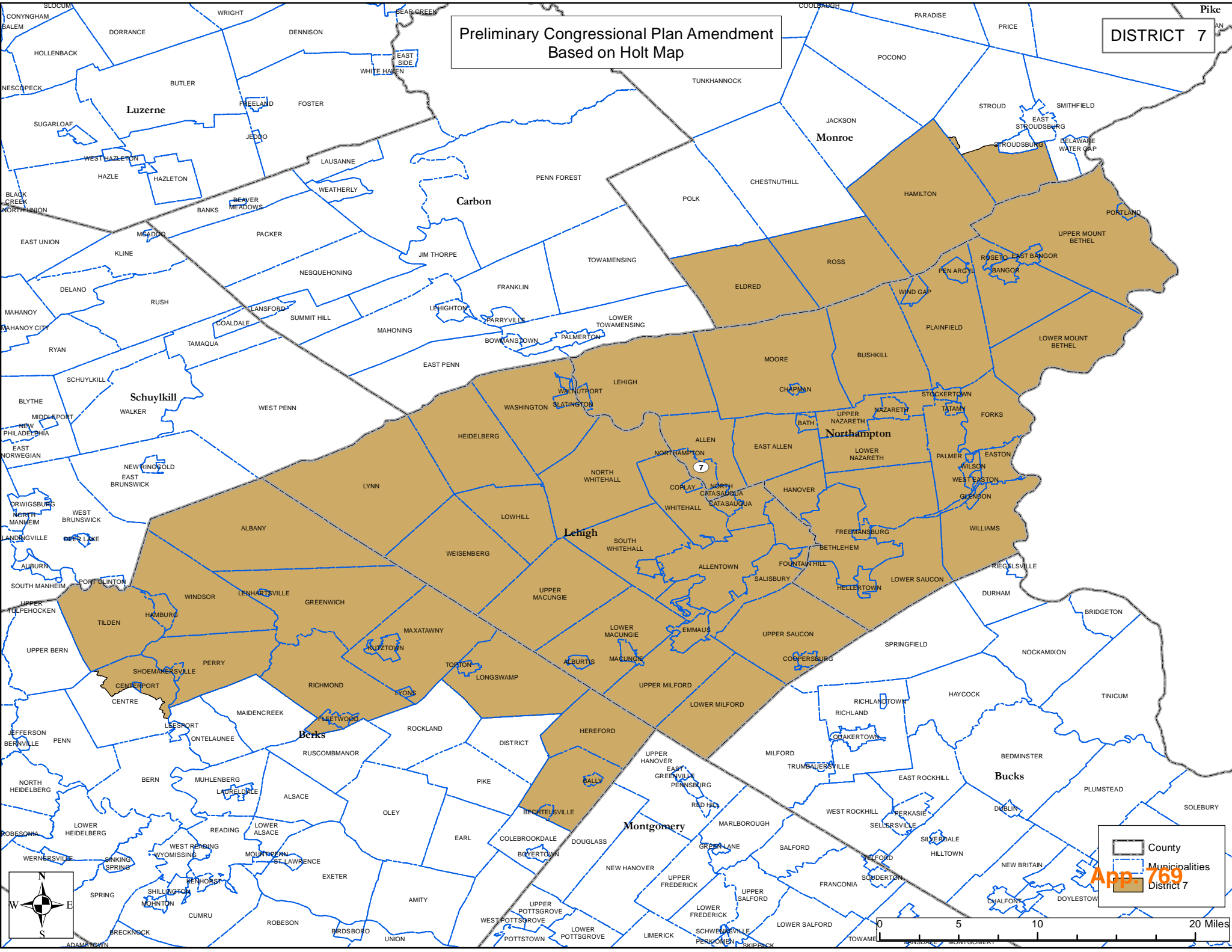
County
Municipalities
District 6

App. 768



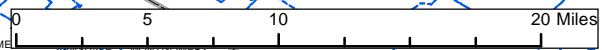
Preliminary Congressional Plan Amendment
Based on Holt Map

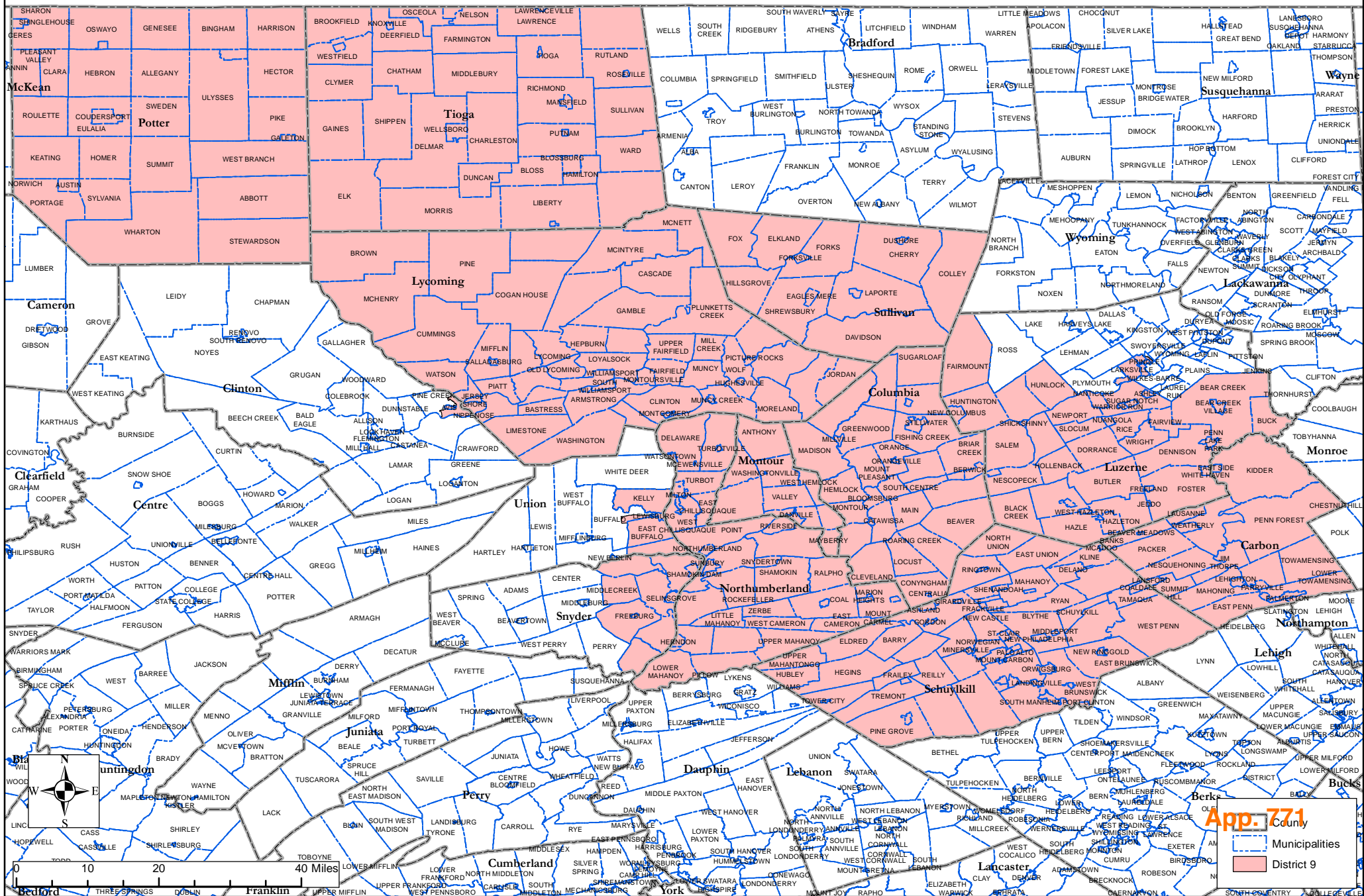
DISTRICT 7



App 769

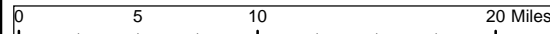
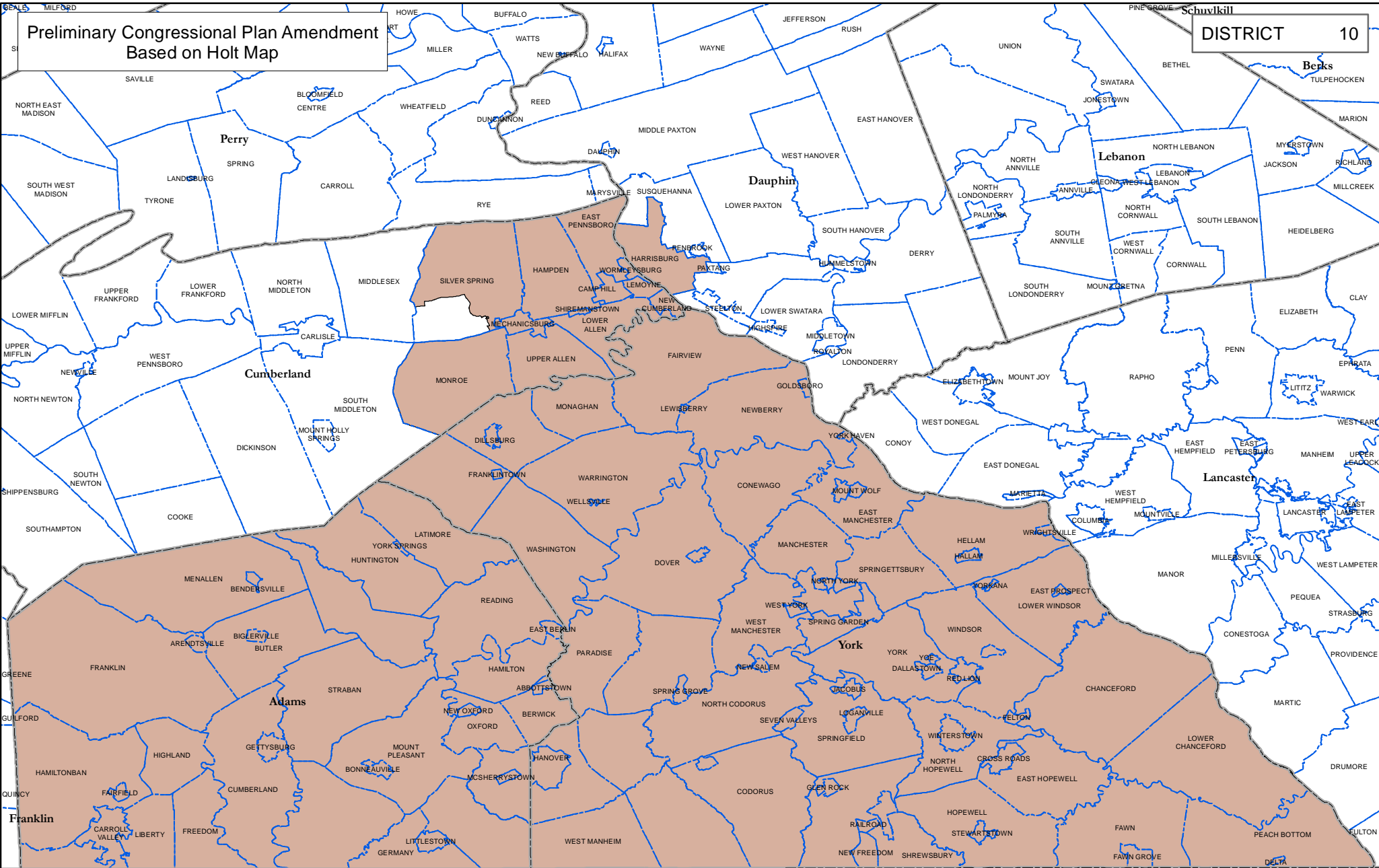
- County
- Municipalities
- District 7





Preliminary Congressional Plan Amendment Based on Holt Map

DISTRICT 10

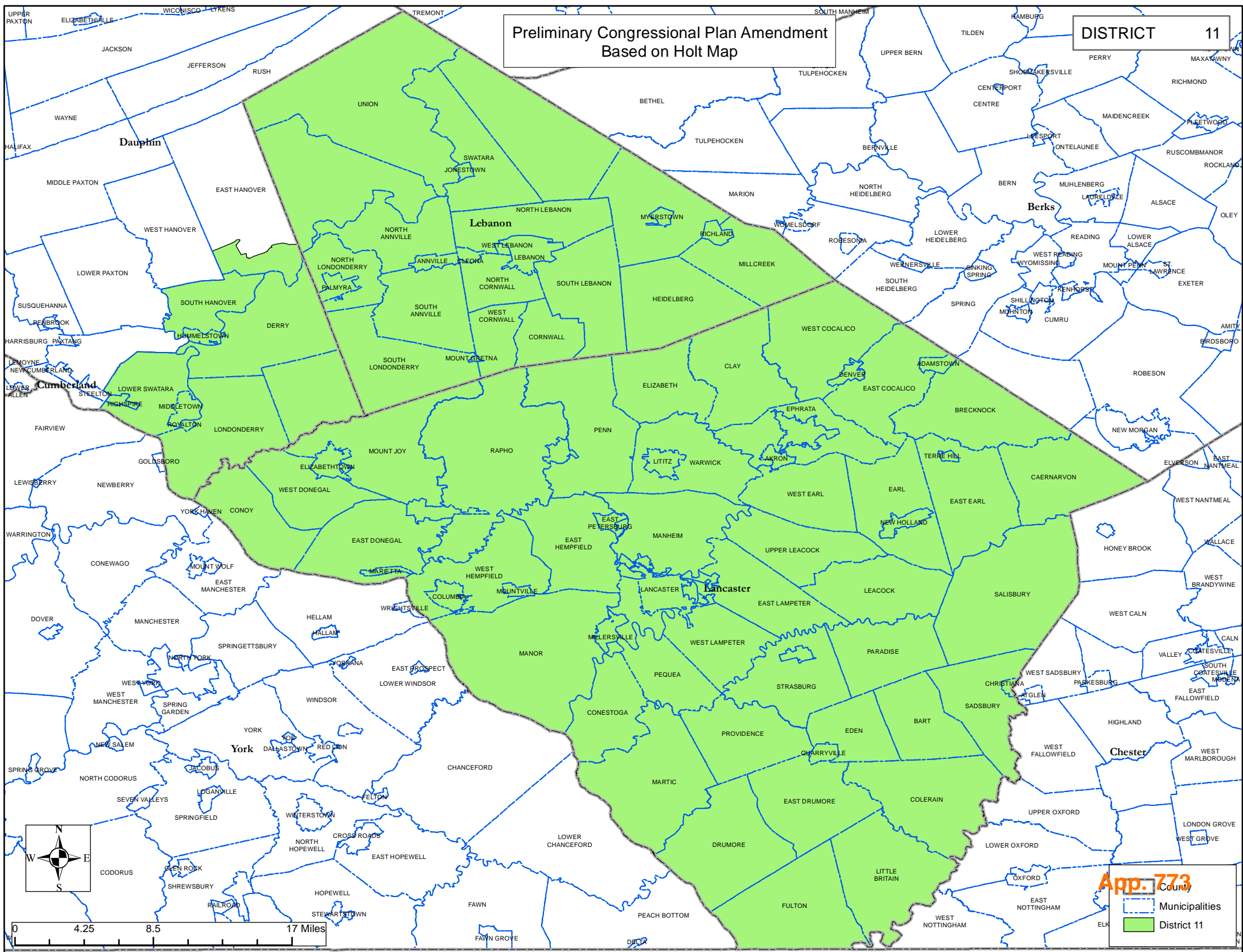


App. 772
County

- Municipalities
- District 10

Preliminary Congressional Plan Amendment
Based on Holt Map

DISTRICT 11

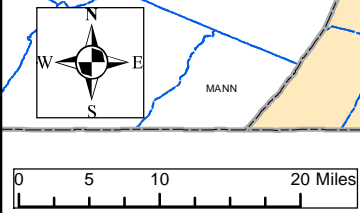
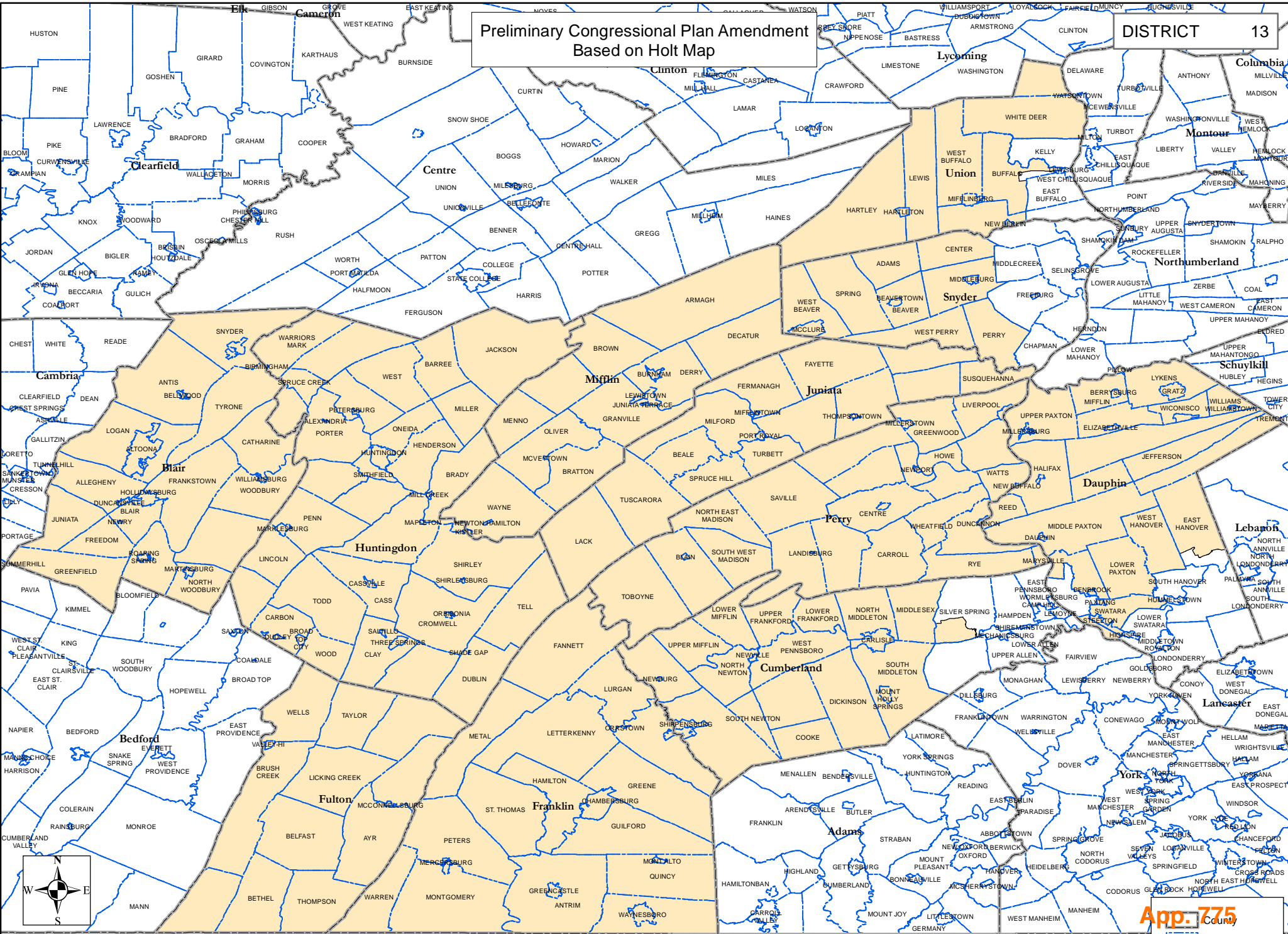


App. 773

Municipalities
District 11

Preliminary Congressional Plan Amendment Based on Holt Map

DISTRICT 13

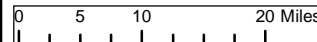
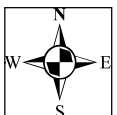
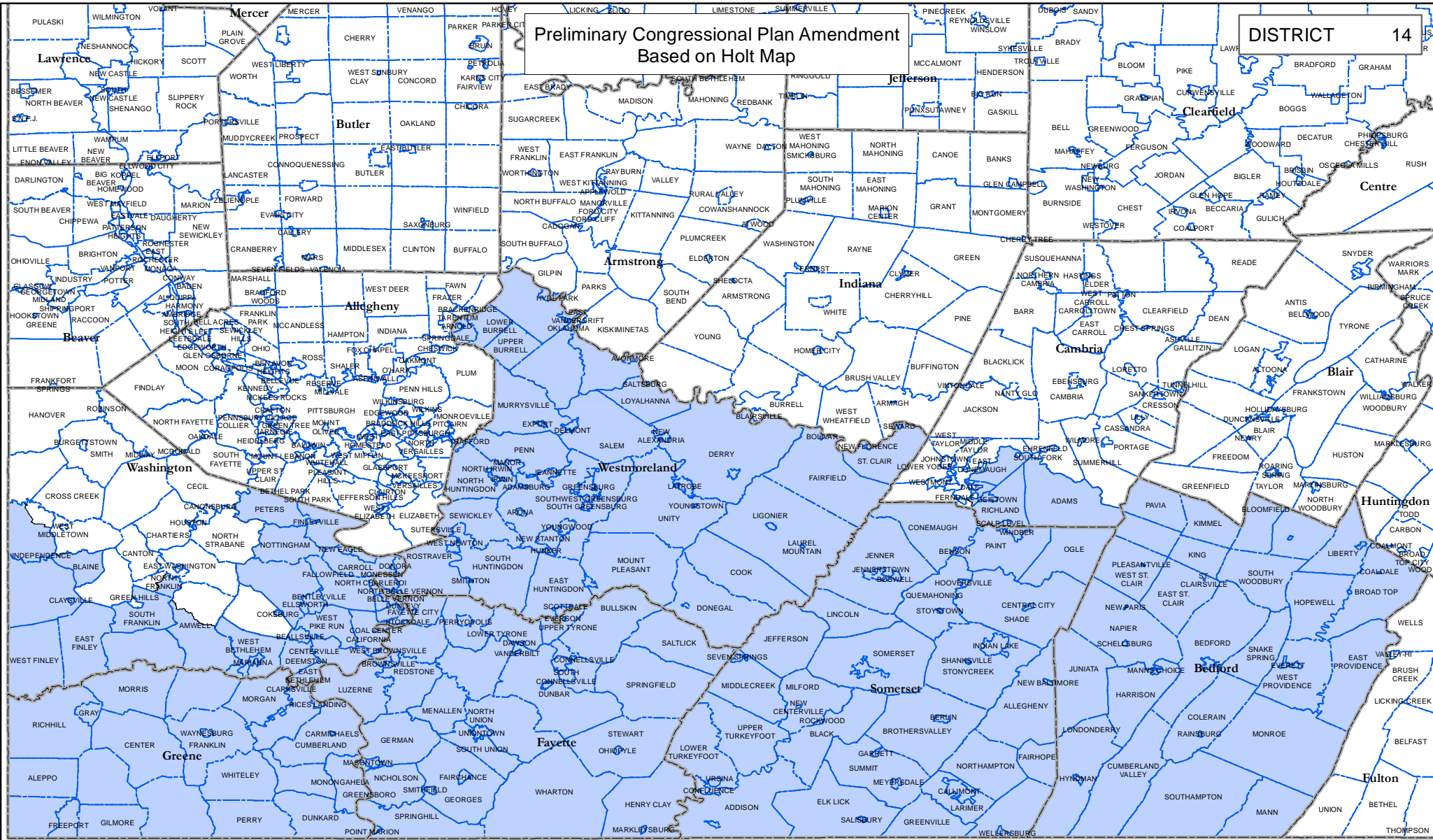


App. 775
County

- Municipalities
- District 13

Preliminary Congressional Plan Amendment Based on Holt Map

DISTRICT 14

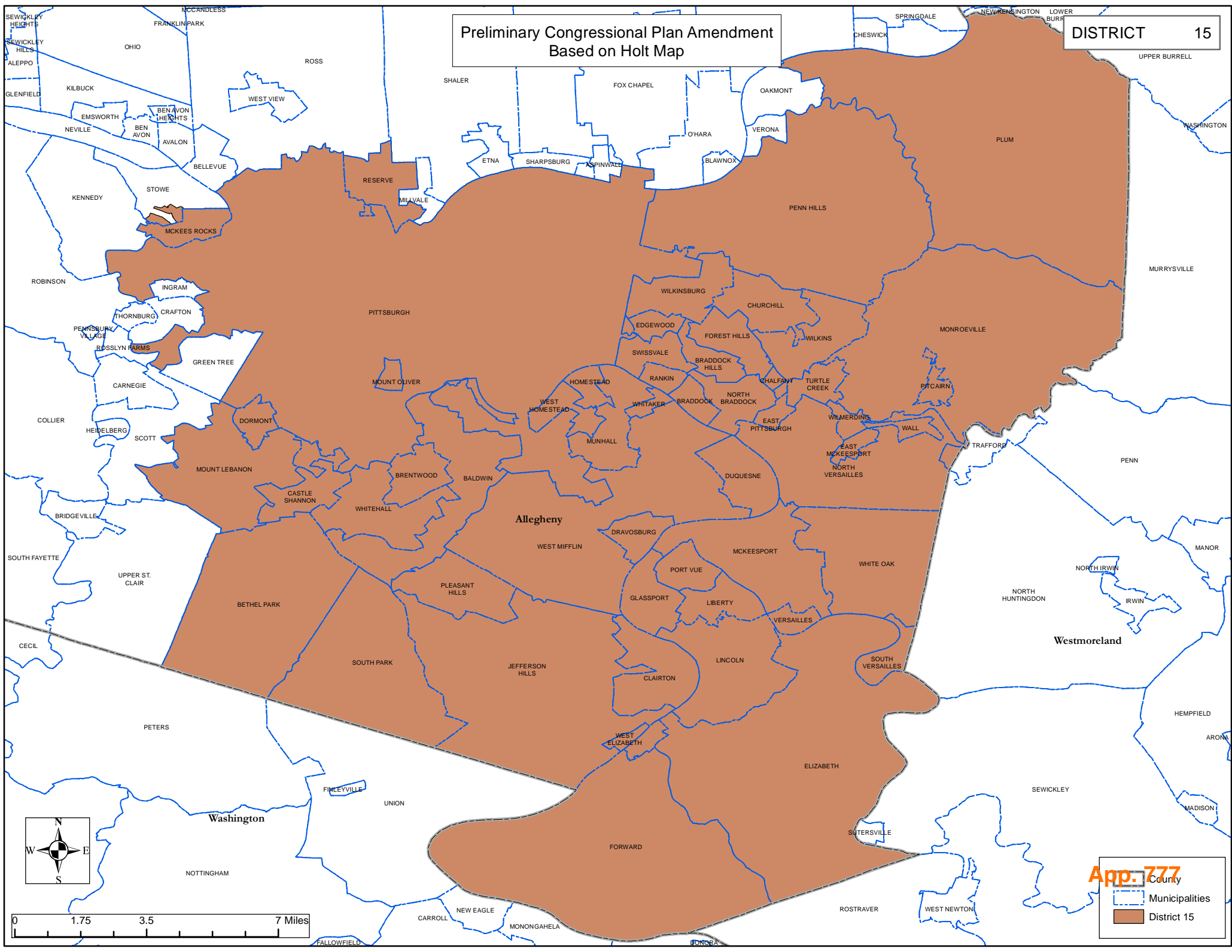


App. 776 County

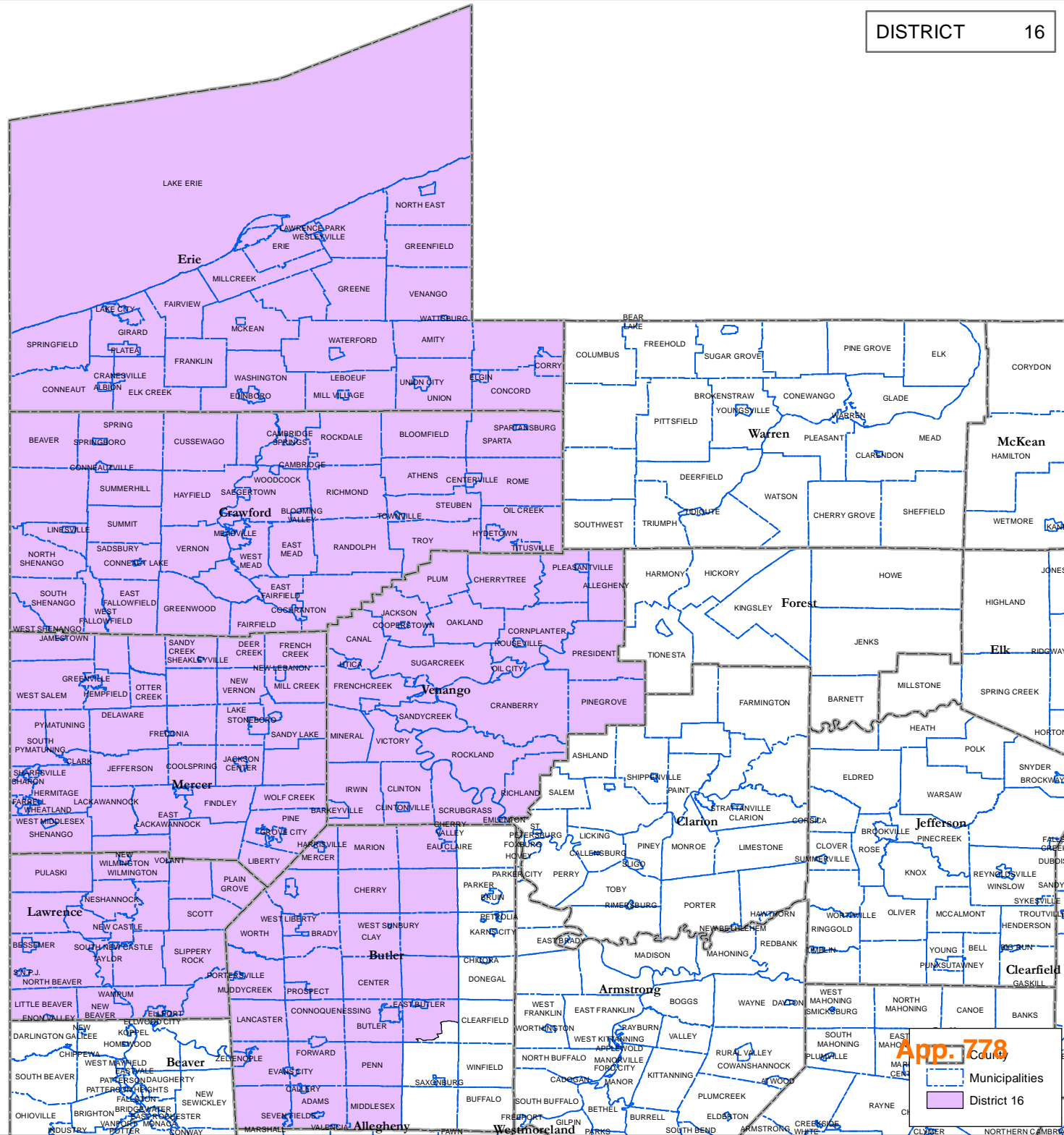
- Municipalities
- District 14

Preliminary Congressional Plan Amendment
Based on Holt Map

DISTRICT 15



App. 777
County
Municipalities
District 15



App. 778

Municipalities
District 16

Exhibit 2

The Statewide population = 13,002,700

The Average population per district = 764,865

DISTRICT	POPULATION	DEVIATION
1	764,865	+0 (0.00%)
2	764,865	+0 (0.00%)
3	764,865	+0 (0.00%)
4	764,865	+0 (0.00%)
5	764,865	+0 (0.00%)
6	764,865	+0 (0.00%)
7	764,864	-1 (0.00%)
8	764,864	-1 (0.00%)
9	764,864	-1 (0.00%)
10	764,865	+0 (0.00%)
11	764,865	+0 (0.00%)
12	764,865	+0 (0.00%)
13	764,864	-1 (0.00%)
14	764,865	+0 (0.00%)
15	764,864	-1 (0.00%)
16	764,865	+0 (0.00%)
17	764,865	+0 (0.00%)

LEGISLATIVE DATA PROCESSING CENTER

COMPOSITE LISTING

OF

CONGRESSIONAL DISTRICTS

<u>DISTRICT NUMBER</u>	<u>DESCRIPTION</u>
Dist. 01	<p>BUCKS and MONTGOMERY Counties. All of BUCKS County and Part of MONTGOMERY County consisting of the TOWNSHIPS of Franconia, Hatfield, Horsham (PART, Districts 02 [PART, Divisions 01, 01 and 03] and 04 [PART, Divisions 02 and 03]), Marlborough, Montgomery, Salford and Upper Hanover and the BOROUGHS of East Greenville, Green Lane, Hatfield, Lansdale, Pennsburg, Red Hill, Souderton and Telford (Montgomery County Portion). Total population: 764,865</p>
Dist. 02	<p>PHILADELPHIA County. Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 01 [PART, Division 17], 02, 05, 07, 08 [PART, Divisions 26, 30, 32 and 34], 14, 16 [PART, Divisions 01, 02, 03, 04 and 05], 18, 19, 20, 23, 25, 31, 33, 35, 37, 41, 42, 43, 45, 47 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08 and 12], 53, 54, 55, 56, 57, 58 [PART, Divisions 02, 04, 05, 06, 12, 13, 14, 20, 21, 22, 23, 24, 25, 28, 29, 31, 34, 35, 37, 39, 40, 41 and 42], 61, 62, 63, 64, 65 and 66). Total population: 764,865</p>

CONGRESSIONAL DISTRICTS

Dist. 03 PHILADELPHIA County.
Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 01 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20 and 21], 03, 04, 06, 08 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 31, 33 and 35], 09, 10, 11, 12, 13, 15, 16 [PART, Divisions 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17 and 18], 17, 21, 22, 24, 27, 28, 29, 30, 32, 34, 36, 38, 39 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 46], 40 [PART, Divisions 02, 03, 04, 06, 07, 10, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 32 and 33], 44, 46, 47 [PART, Divisions 09, 10, 11, 13 and 14], 48, 49, 50, 51, 52, 59 and 60).
Total population: 764,865

Dist. 04 MONTGOMERY and PHILADELPHIA Counties.
Part of MONTGOMERY County consisting of the TOWNSHIPS of Abington, Cheltenham, Douglass, East Norriton, Horsham (PART, Districts 01, 02 [PART, Divisions 02 and 04], 03 and 04 [PART, Divisions 01, 02 and 04]), Limerick, Lower Frederick, Lower Gwynedd, Lower Merion, Lower Moreland, Lower Pottsgrove, Lower Providence, Lower Salford, New Hanover, Perkiomen, Plymouth, Skippack, Springfield, Towamencin, Upper Dublin, Upper Frederick, Upper Gwynedd, Upper Merion, Upper Moreland, Upper Pottsgrove, Upper Providence, Upper Salford, West Norriton, West Pottsgrove, Whitemarsh, Whitpain and Worcester and the BOROUGHES of Ambler, Bridgeport, Bryn Athyn, Collegeville, Conshohocken, Hatboro, Jenkintown, Narberth, Norristown, North Wales, Pottstown, Rockledge, Royersford, Schwenksville, Trappe and West Conshohocken and Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Ward 58 [PART, Divisions 01, 03, 07, 08, 09, 10, 11, 15, 16, 17, 18, 19, 26, 27, 30, 32, 33, 36, 38, 43 and 44]).
Total population: 764,865

CONGRESSIONAL DISTRICTS

Dist. 05 CHESTER, DELAWARE and PHILADELPHIA Counties.
Part of CHESTER County consisting of the TOWNSHIPS of Birmingham, East Bradford, East Goshen, East Marlborough, Kennett, New Garden, Pennsbury, Pocopson, Thornbury, West Goshen, West Whiteland (PART, Precincts 01, 02, 03 and 04 (all blocks except 1016 and 3000 of tract 302205)) and Westtown and the BOROUGHs of Kennett Square and West Chester; All of DELAWARE County and Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 26, 39 [PART, Division 14] and 40 [PART, Divisions 01, 05, 08, 09, 11, 14, 15, 16, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51]).
Total population: 764,865

CONGRESSIONAL DISTRICTS

Dist. 06 BERKS and CHESTER Counties.
Part of BERKS County consisting of the CITY of Reading and the TOWNSHIPS of Alsace, Amity, Bern, Bethel, Brecknock, Caernarvon, Centre (PART, Precincts 01 and 02 (only blocks 1029, 1030, 1031, 1033, 1034, 1039, 1044, 1045, 1046, 3010, 3012, 3013, 3014, 3021, 3022, 3023, 3024, 3025, 3026, 3027, 3028, 3029, 3037, 3042, 3050, 3056, 3059 and 3066 of tract 010201)), Colebrookdale, Cumru, District, Douglass, Earl, Exeter, Heidelberg, Jefferson, Lower Alsace, Lower Heidelberg, Maiden creek, Marion, Muhlenberg, North Heidelberg, Oley, Ontelaunee, Penn, Pike, Robeson, Rockland, Ruscombmanor, South Heidelberg, Spring, Tulpehocken, Union, Upper Bern and Upper Tulpehocken and the BOROUGHS of Adamstown (Berks County Portion), Bernville, Birdsboro, Boyertown, Kenhorst, Laureldale, Leesport, Mohnton, Mount Penn, New Morgan, Robesonia, Shillington, Sinking Spring, St. Lawrence, Wernersville, West Reading, Womelsdorf and Wyomissing and Part of CHESTER County consisting of the CITY of Coatesville and the TOWNSHIPS of Caln, Charlestown, East Brandywine, East Caln, East Coventry, East Fallowfield, East Nantmeal, East Nottingham, East Pikeland, East Vincent, East Whiteland, Easttown, Elk, Franklin, Highland, Honey Brook, London Britain, London Grove, Londonderry, Lower Oxford, New London, Newlin, North Coventry, Penn, Sadsbury, Schuylkill, South Coventry, Tredyffrin, Upper Oxford, Upper Uwchlan, Uwchlan, Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Fallowfield, West Marlborough, West Nantmeal, West Nottingham, West Pikeland, West Sadsbury, West Vincent, West Whiteland (PART, Precincts 04 (only blocks 1016 and 3000 of tract 302205), 05, 06 and 07) and Willistown and the BOROUGHS of Atglen, Avondale, Downingtown, Elverson, Honey Brook, Malvern, Modena, Oxford, Parkesburg, Phoenixville, South Coatesville, Spring City and West Grove.
Total population: 764,865

CONGRESSIONAL DISTRICTS

Dist. 07 BERKS, LEHIGH, MONROE and NORTHAMPTON Counties.
Part of BERKS County consisting of the TOWNSHIPS of Albany, Centre (PART, Precinct 02 (all blocks except 1029, 1030, 1031, 1033, 1034, 1039, 1044, 1045, 1046, 3010, 3012, 3013, 3014, 3021, 3022, 3023, 3024, 3025, 3026, 3027, 3028, 3029, 3037, 3042, 3050, 3056, 3059 and 3066 of tract 010201)), Greenwich, Hereford, Longswamp, Maxatawny, Perry, Richmond, Tilden, Washington and Windsor and the BOROUGHS of Bally, Bechtelsville, Centerport, Fleetwood, Hamburg, Kutztown, Lenhartsville, Lyons, Shoemakersville and Topton; All of LEHIGH County; Part of MONROE County consisting of the TOWNSHIPS of Eldred, Hamilton, Ross and Stroud (PART, Districts 05 (only blocks 2015, 2016, 2017 and 2018 of tract 301002), 06 and 07) and All of NORTHAMPTON County.
Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 08 BRADFORD, LACKAWANNA, LUZERNE, MONROE, PIKE, SUSQUEHANNA, WAYNE and WYOMING Counties.
All of BRADFORD County; All of LACKAWANNA County; Part of LUZERNE County consisting of the CITIES of Pittston and Wilkes-Barre and the TOWNSHIPS of Dallas, Exeter, Franklin, Jackson, Jenkins, Kingston, Lake, Lehman, Pittston, Plains, Plymouth, Ross and Wilkes-Barre and the BOROUGHES of Avoca, Dallas, Dupont, Duryea, Exeter, Forty Fort, Harveys Lake, Hughestown, Kingston, Laflin, Laurel Run, Luzerne (PART, (all blocks except 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3018, 3019, 3026, 3027 and 3028 of tract 212300)), Swoyersville, West Pittston, West Wyoming, Wyoming and Yatesville; Part of MONROE County consisting of the TOWNSHIPS of Barrett, Chestnuthill, Coolbaugh, Jackson, Middle Smithfield, Paradise, Pocono, Polk, Price, Smithfield, Stroud (PART, Districts 01, 02, 03, 04 and 05 (all blocks except 2015, 2016, 2017 and 2018 of tract 301002)), Tobyhanna and Tunkhannock and the BOROUGHES of Delaware Water Gap, East Stroudsburg, Mount Pocono and Stroudsburg; All of PIKE County; All of SUSQUEHANNA County; All of WAYNE County and All of WYOMING County.
Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 09 CARBON, CLINTON, COLUMBIA, LUZERNE, LYCOMING,
MONTOUR, NORTHUMBERLAND, POTTER, SCHUYLKILL, SNYDER,
SULLIVAN, TIOGA and UNION Counties.
All of CARBON County; Part of CLINTON County
consisting of the TOWNSHIP of Pine Creek (PART,
District 01 (all blocks except 1007, 1008, 1010, 1011,
1037, 1064, 2003, 2004, 2005, 2006, 2007, 2008, 2009,
2010, 2013, 2015, 2016, 2022, 2023, 2024, 2025, 2027,
2028, 2057, 2059, 3000 and 3021 of tract 030400)) and
the BOROUGH of Avis; All of COLUMBIA County; Part of
LUZERNE County consisting of the CITIES of Hazleton
and Nanticoke and the TOWNSHIPS of Bear Creek, Black
Creek, Buck, Butler, Conyngham, Dennison, Dorrance,
Fairmount, Fairview, Foster, Hanover, Hazle,
Hollenback, Hunlock, Huntington, Nescopeck, Newport,
Rice, Salem, Slocum, Sugarloaf, Union and Wright and
the BOROUGHS of Ashley, Bear Creek Village, Conyngham,
Courtdale, Edwardsville, Freeland, Jeddo, Larksville,
Luzerne (PART, (all blocks except 1000, 1001, 1002,
1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011,
1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020,
1021, 1022, 1023, 1024, 3000, 3001, 3002, 3014, 3015,
3016, 3017, 3020, 3021, 3022, 3023, 3024 and 3025 of
tract 212300)), Nescopeck, New Columbus, Nuangola,
Penn Lake Park, Plymouth, Pringle, Shickshinny, Sugar
Notch, Warrior Run, West Hazleton and White Haven;
All of LYCOMING County; All of MONTOUR County; All of
NORTHUMBERLAND County; All of POTTER County; All of
SCHUYLKILL County; Part of SNYDER County consisting
of the TOWNSHIPS of Chapman, Jackson, Middlecreek,
Monroe, Penn, Union and Washington and the BOROUGHS
of Freeburg, Selinsgrove and Shamokin Dam; All of
SULLIVAN County; All of TIOGA County and Part of UNION
County consisting of the TOWNSHIPS of Buffalo (PART,
District 01 (only blocks 2034, 2035, 2036, 2037, 2044,
2045, 2047, 2056, 2057, 2058, 2059, 2060, 2061, 2062
and 2063 of tract 090502)), East Buffalo, Kelly and
Union and the BOROUGH of Lewisburg.
Total population: 764,864

CONGRESSIONAL DISTRICTS

- Dist. 10 ADAMS, CUMBERLAND, DAUPHIN and YORK Counties.
All of ADAMS County; Part of CUMBERLAND County
consisting of the TOWNSHIPS of East Pennsboro,
Hampden, Lower Allen, Monroe, Silver Spring (PART,
Precincts 02 (all blocks except 2020, 2021, 2026,
2027, 2028, 2029 and 2030 of tract 011806), 03, 04,
05, 06, 07, 08 and 09) and Upper Allen and the
BOROUGHES of Camp Hill, Lemoyne, Mechanicsburg, New
Cumberland, Shiremanstown and Wormleysburg; Part of
DAUPHIN County consisting of the CITY of Harrisburg
and All of YORK County.
Total population: 764,865
- Dist. 11 DAUPHIN, LANCASTER and LEBANON Counties.
Part of DAUPHIN County consisting of the TOWNSHIPS of
Conewago, Derry, East Hanover (PART, Precinct 01 (only
blocks 2077, 2078, 2081, 2082, 2083, 2084, 3013, 3014,
3016, 3017, 3018, 3019, 3020, 3021, 3022, 3023, 3024,
3025, 3026, 3027, 3028, 3029, 3030, 3031, 3032, 3033,
3034, 3035, 3036, 3037, 3038, 3039, 3040, 3041, 3042,
3043 and 3044 of tract 024502)), Londonderry, Lower
Swatara and South Hanover and the BOROUGHES of
Highspire, Hummelstown, Middletown and Royalton; All
of LANCASTER County and All of LEBANON County.
Total population: 764,865

CONGRESSIONAL DISTRICTS

Dist. 12 ARMSTRONG, BUTLER, CAMBRIA, CAMERON, CENTRE, CLARION, CLEARFIELD, CLINTON, ELK, FOREST, INDIANA, JEFFERSON, MCKEAN and WARREN Counties.

All of ARMSTRONG County; Part of BUTLER County consisting of the TOWNSHIPS of Allegheny, Buffalo, Clearfield, Clinton, Donegal, Fairview, Jefferson, Parker, Summit (PART, District South (only blocks 1012, 1013, 1015, 1016, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 3042, 3049, 3050 and 3051 of tract 911200)) and Winfield and the BOROUGHS of Bruin, Chicora, Fairview, Karns City, Petrolia and Saxonburg; Part of CAMBRIA County consisting of the CITY of Johnstown and the TOWNSHIPS of Allegheny, Barr, Blacklick, Cambria, Chest, Clearfield, Cresson, Croyle, Dean, East Carroll, East Taylor, Elder, Gallitzin, Jackson, Lower Yoder, Middle Taylor, Munster, Portage, Reade, Stonycreek (PART, District 02), Summerhill, Susquehanna, Upper Yoder, Washington, West Carroll, West Taylor and White and the BOROUGHS of Ashville, Brownstown, Carrolltown, Cassandra, Chest Springs, Cresson, Daisytown, Dale, East Conemaugh, Ebensburg, Ehrenfeld, Ferndale, Franklin, Gallitzin, Hastings, Lilly, Lorain, Loretto, Nanty Glo, Northern Cambria, Patton, Portage, Sankertown, South Fork, Southmont, Summerhill, Tunnelhill (Cambria County Portion), Vintondale, Westmont and Wilmore; All of CAMERON County; All of CENTRE County; All of CLARION County; All of CLEARFIELD County; Part of CLINTON County consisting of the CITY of Lock Haven and the TOWNSHIPS of Allison, Bald Eagle, Beech Creek, Castanea, Chapman, Colebrook, Crawford, Dunnstable, East Keating, Gallagher, Greene, Grugan, Lamar, Leidy, Logan, Noyes, Pine Creek (PART, Districts 01 (only blocks 1007, 1008, 1010, 1011, 1037, 1064, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2013, 2015, 2016, 2022, 2023, 2024, 2025, 2027, 2028, 2057, 2059, 3000 and 3021 of tract 030400) and 02), Porter, Wayne, West Keating and Woodward and the BOROUGHS of Beech Creek, Flemington, Loganton, Mill Hall, Renovo and South Renovo; All of ELK County; All of FOREST County; All of INDIANA County; All of JEFFERSON County; All of MCKEAN County and All of WARREN County.

Total population: 764,865

CONGRESSIONAL DISTRICTS

Dist. 13 BLAIR, CUMBERLAND, DAUPHIN, FRANKLIN, FULTON, HUNTINGDON, JUNIATA, MIFFLIN, PERRY, SNYDER and UNION Counties.

All of BLAIR County; Part of CUMBERLAND County consisting of the TOWNSHIPS of Cooke, Dickinson, Hopewell, Lower Frankford, Lower Mifflin, Middlesex, North Middleton, North Newton, Penn, Shippensburg, Silver Spring (PART, Precincts 01 and 02 (only blocks 2020, 2021, 2026, 2027, 2028, 2029 and 2030 of tract 011806)), South Middleton, South Newton, Southampton, Upper Frankford, Upper Mifflin and West Pennsboro and the BOROUGHS of Carlisle, Mount Holly Springs, Newburg, Newville and Shippensburg (Cumberland County Portion); Part of DAUPHIN County consisting of the TOWNSHIPS of East Hanover (PART, Precincts 01 (all blocks except 2077, 2078, 2081, 2082, 2083, 2084, 3013, 3014, 3016, 3017, 3018, 3019, 3020, 3021, 3022, 3023, 3024, 3025, 3026, 3027, 3028, 3029, 3030, 3031, 3032, 3033, 3034, 3035, 3036, 3037, 3038, 3039, 3040, 3041, 3042, 3043 and 3044 of tract 024502) and 02), Halifax, Jackson, Jefferson, Lower Paxton, Lykens, Middle Paxton, Mifflin, Reed, Rush, Susquehanna, Swatara, Upper Paxton, Washington, Wayne, West Hanover, Wiconisco and Williams and the BOROUGHS of Berrysburg, Dauphin, Elizabethville, Gratz, Halifax, Lykens, Millersburg, Paxtang, Penbrook, Pillow, Steelton and Williamstown; All of FRANKLIN County; All of FULTON County; All of HUNTINGDON County; All of JUNIATA County; All of MIFFLIN County; All of PERRY County; Part of SNYDER County consisting of the TOWNSHIPS of Adams, Beaver, Center, Franklin, Perry, Spring, West Beaver and West Perry and the BOROUGHS of Beavertown, McClure and Middleburg and Part of UNION County consisting of the TOWNSHIPS of Buffalo (PART, Districts 01 (all blocks except 2034, 2035, 2036, 2037, 2044, 2045, 2047, 2056, 2057, 2058, 2059, 2060, 2061, 2062 and 2063 of tract 090502) and 02), Gregg, Hartley, Lewis, Limestone, West Buffalo and White Deer and the BOROUGHS of Hartleton, Mifflinburg and New Berlin.

Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 14 BEDFORD, CAMBRIA, FAYETTE, GREENE, SOMERSET,
WASHINGTON and WESTMORELAND Counties.
All of BEDFORD County; Part of CAMBRIA County
consisting of the TOWNSHIPS of Adams, Conemaugh,
Richland and Stonycreek (PART, Districts 01, 03 and
04) and the BOROUGHs of Geistown and Scalp Level; All
of FAYETTE County; All of GREENE County; All of
SOMERSET County; Part of WASHINGTON County consisting
of the CITY of Monongahela and the TOWNSHIPS of Amwell
(PART, District 02), Blaine, Carroll, Donegal, East
Bethlehem, East Finley, Fallowfield, Independence
(PART, District 01), Morris, North Franklin (PART,
District 01), Nottingham, Peters, Somerset, South
Franklin, Union, West Bethlehem, West Finley and West
Pike Run and the BOROUGHs of Allenport, Beallsville,
Bentleyville, California, Centerville, Charleroi,
Claysville, Coal Center, Cokeburg, Deemston, Donora,
Dunlevy, Elco, Ellsworth, Finleyville, Long Branch,
Marianna, New Eagle, North Charleroi, Roscoe, Speers,
Stockdale, Twilight and West Brownsville and All of
WESTMORELAND County.
Total population: 764,865

Dist. 15 ALLEGHENY County.
Part of ALLEGHENY County consisting of the CITIES of
Clairton, Duquesne, McKeesport and Pittsburgh and the
TOWNSHIPS of Baldwin, Elizabeth, Forward, Mount
Lebanon, North Versailles, Penn Hills, Reserve, South
Park, South Versailles, Stowe (PART, Wards 01, 02
[PART, Division 01], 06 and 09) and Wilkins and the
BOROUGHs of Baldwin, Bethel Park, Braddock, Braddock
Hills, Brentwood, Castle Shannon, Chalfant, Churchill,
Dormont, Dravosburg, East McKeesport, East Pittsburgh,
Edgewood, Elizabeth, Forest Hills, Glassport,
Homestead, Jefferson Hills, Liberty, Lincoln, McKees
Rocks, Monroeville, Mount Oliver, Munhall, North
Braddock, Pitcairn, Pleasant Hills, Plum, Port Vue,
Rankin, Swissvale, Trafford (Allegheny County
Portion), Turtle Creek, Versailles, Wall, West
Elizabeth, West Homestead, West Mifflin, Whitaker,
White Oak, Whitehall, Wilkinsburg and Wilmerding.
Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 16 BUTLER, CRAWFORD, ERIE, LAWRENCE, MERCER and VENANGO Counties.
Part of BUTLER County consisting of the CITY of Butler and the TOWNSHIPS of Adams, Brady, Butler, Center, Cherry, Clay, Concord, Connoquenessing, Cranberry, Forward, Franklin, Jackson, Lancaster, Marion, Mercer, Middlesex, Muddycreek, Oakland, Penn, Slippery Rock, Summit (PART, Districts North and South (all blocks except 1012, 1013, 1015, 1016, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 3042, 3049, 3050 and 3051 of tract 911200)), Venango, Washington and Worth and the BOROUGHs of Callery, Cherry Valley, Connoquenessing, East Butler, Eau Claire, Evans City, Harmony, Harrisville, Mars, Portersville, Prospect, Seven Fields, Slippery Rock, Valencia, West Liberty, West Sunbury and Zelienople; All of CRAWFORD County; All of ERIE County; All of LAWRENCE County; All of MERCER County and All of VENANGO County.
Total population: 764,865

CONGRESSIONAL DISTRICTS

Dist. 17 ALLEGHENY, BEAVER and WASHINGTON Counties.
Part of ALLEGHENY County consisting of the TOWNSHIPS of Aleppo, Collier, Crescent, East Deer, Fawn, Findlay, Frazer, Hampton, Harmar, Harrison, Indiana, Kennedy, Kilbuck, Leet, Marshall, McCandless, Moon, Neville, North Fayette, O'Hara, Ohio, Pine, Richland, Robinson, Ross, Scott, Shaler, South Fayette, Springdale, Stowe (PART, Wards 02 [PART, Division 02], 03, 04, 05, 07 and 08), Upper St. Clair and West Deer and the BOROUGHs of Aspinwall, Avalon, Bell Acres, Bellevue, Ben Avon, Ben Avon Heights, Blawnox, Brackenridge, Bradford Woods, Bridgeville, Carnegie, Cheswick, Coraopolis, Crafton, Edgeworth, Emsworth, Etna, Fox Chapel, Franklin Park, Glen Osborne, Glenfield, Green Tree, Haysville, Heidelberg, Ingram, Leetsdale, McDonald (Allegheny County Portion), Millvale, Oakdale, Oakmont, Pennsbury Village, Rosslyn Farms, Sewickley, Sewickley Heights, Sewickley Hills, Sharpsburg, Springdale, Tarentum, Thornburg, Verona and West View; All of BEAVER County and Part of WASHINGTON County consisting of the CITY of Washington and the TOWNSHIPS of Amwell (PART, District 01), Buffalo, Canton, Cecil, Chartiers, Cross Creek, Hanover, Hopewell, Independence (PART, District 02), Jefferson, Mount Pleasant, North Bethlehem, North Franklin (PART, Districts 02 and 03), North Strabane, Robinson, Smith and South Strabane and the BOROUGHs of Burgettstown, Canonsburg, East Washington, Green Hills, Houston, McDonald (Washington County Portion), Midway and West Middletown.
Total population: 764,865

Population of all districts: 13,002,700

COUNTIES SPLIT BY CONGRESSIONAL DISTRICTS

15 TOTAL COUNTIES

18 TOTAL SPLITS

ALLEGHENY	015 017
BERKS	006 007
BUTLER	012 016
CAMBRIA	012 014
CHESTER	005 006
CLINTON	009 012
CUMBERLAND	010 013
DAUPHIN	010 011 013
LUZERNE	008 009
MONROE	007 008
MONTGOMERY	001 004
PHILADELPHIA	002 003 004 005
SNYDER	009 013
UNION	009 013
WASHINGTON	014 017

PLACES SPLIT BY CONGRESSIONAL DISTRICTS

16 TOTAL PLACES

18 TOTAL SPLITS

ALLEGHENY COUNTY		
STOWE	TOWNSHIP	015 017
BERKS COUNTY		
CENTRE	TOWNSHIP	006 007
BUTLER COUNTY		
SUMMIT	TOWNSHIP	012 016
CAMBRIA COUNTY		
STONYCREEK	TOWNSHIP	012 014
CHESTER COUNTY		
WEST WHITELAND	TOWNSHIP	005 006
CLINTON COUNTY		
PINE CREEK	TOWNSHIP	009 012
CUMBERLAND COUNTY		
SILVER SPRING	TOWNSHIP	010 013
DAUPHIN COUNTY		
EAST HANOVER	TOWNSHIP	011 013
LUZERNE COUNTY		
LUZERNE	BOROUGH	008 009
MONROE COUNTY		
STROUD	TOWNSHIP	007 008
MONTGOMERY COUNTY		
HORSHAM	TOWNSHIP	001 004
PHILADELPHIA COUNTY		
PHILADELPHIA	CITY	002 003 004 005
UNION COUNTY		
BUFFALO	TOWNSHIP	009 013

PLACES SPLIT BY CONGRESSIONAL DISTRICTS

WASHINGTON COUNTY

AMWELL	TOWNSHIP	014	017
INDEPENDENCE	TOWNSHIP	014	017
NORTH FRANKLIN	TOWNSHIP	014	017

WARDS SPLIT BY CONGRESSIONAL DISTRICTS

19 TOTAL WARDS

19 TOTAL SPLITS

ALLEGHENY COUNTY

STOWE

TOWNSHIP

WARD 02

015 017

BERKS COUNTY

CENTRE

TOWNSHIP

WARD 02

006 007

BUTLER COUNTY

SUMMIT

TOWNSHIP

WARD SOUTH

012 016

CHESTER COUNTY

WEST WHITELAND

TOWNSHIP

WARD 04

005 006

CLINTON COUNTY

PINE CREEK

TOWNSHIP

WARD 01

009 012

CUMBERLAND COUNTY

SILVER SPRING

TOWNSHIP

WARD 02

010 013

DAUPHIN COUNTY

EAST HANOVER

TOWNSHIP

WARD 01

011 013

LUZERNE COUNTY

LUZERNE

BOROUGH

WARD

008 009

MONROE COUNTY

STROUD

TOWNSHIP

WARD 05

007 008

MONTGOMERY COUNTY

HORSHAM

TOWNSHIP

WARD 02

001 004

WARD 04

001 004

WARDS SPLIT BY CONGRESSIONAL DISTRICTS

PHILADELPHIA COUNTY

PHILADELPHIA

CITY

WARD 01	002 003
WARD 08	002 003
WARD 16	002 003
WARD 39	003 005
WARD 40	003 005
WARD 47	002 003
WARD 58	002 004

UNION COUNTY

BUFFALO

TOWNSHIP

WARD 01	009 013
---------	---------

Exhibit 3

Compactness Report

HB2146

[For more information on compactness calculations Click Here](#)

Compactness measure: Polsby–Popper

District	District Area (SQM)	Perimeter (Miles)	Area of Circle with Same Perimeter	Perimeter of	Compactness Value
1	713	151	1,807	95	0.39
2	65	61	291	29	0.22
3	56	55	241	27	0.23
4	399	142	1,606	71	0.25
5	339	129	1,331	65	0.25
6	1,246	284	6,424	125	0.19
7	1,071	192	2,921	116	0.37
8	4,979	421	14,125	250	0.35
9	6,984	539	23,120	296	0.30
10	1,557	211	3,536	140	0.44
11	1,455	193	2,954	135	0.49
12	10,301	557	24,711	360	0.42
13	5,350	483	18,585	259	0.29
14	5,051	520	21,491	252	0.24
15	308	116	1,070	62	0.29
16	4,896	354	9,979	248	0.49
17	1,284	260	5,383	127	0.24

Most Compact: 0.49 For District: 16

0.32

Least Compact: 0.19 For District: 6

Compactness measure: Schwartzberg

District	District Area (SQM)	Perimeter (Miles)	Area of Circle with Same Perimeter	Perimeter of	Compactness Value
1	713	151	1,807	95	0.63
2	65	61	291	29	0.47
3	56	55	241	27	0.48
4	399	142	1,606	71	0.50
5	339	129	1,331	65	0.50
6	1,246	284	6,424	125	0.44
7	1,071	192	2,921	116	0.61
8	4,979	421	14,125	250	0.59
9	6,984	539	23,120	296	0.55
10	1,557	211	3,536	140	0.66
11	1,455	193	2,954	135	0.70
12	10,301	557	24,711	360	0.65
13	5,350	483	18,585	259	0.54
14	5,051	520	21,491	252	0.48
15	308	116	1,070	62	0.54
16	4,896	354	9,979	248	0.70
17	1,284	260	5,383	127	0.49

Most Compact: 0.7 For District: 16

0.56

Least Compact: 0.44 For District: 6

Compactness measure: Reock Score

App. 801

District	District Area (SQM)	Perimeter (Miles)	Area of Circle with Same Perimeter	Perimeter of	Compactness Value
----------	---------------------	-------------------	------------------------------------	--------------	-------------------

District	District Area (SQM)	Perimeter (Miles)	Area of Circle with Same Perimeter	Perimeter of	Compactness Value
1	713	151	1,807	95	0.40
2	65	61	291	29	0.30
3	56	55	241	27	0.37
4	399	142	1,606	71	0.36
5	339	129	1,331	65	0.34
6	1,246	284	6,424	125	0.38
7	1,071	192	2,921	116	0.40
8	4,979	421	14,125	250	0.41
9	6,984	539	23,120	296	0.33
10	1,557	211	3,536	140	0.44
11	1,455	193	2,954	135	0.49
12	10,301	557	24,711	360	0.62
13	5,350	483	18,585	259	0.43
14	5,051	520	21,491	252	0.38
15	308	116	1,070	62	0.58
16	4,896	354	9,979	248	0.38
17	1,284	260	5,383	127	0.45

Most Compact: 0.62 For District: 12

0.42

Least Compact: 0.3 For District: 2

Exhibit 4

Precinct Splits Population Breakdowns by District

Summit Township, Butler County, Population Total: 4,504

District 12	District 16
3,678	826

Pine Creek Township, Clinton County, Population Total: 3,416

District 9	District 12
1,289	2,127

Buffalo Township, Union County, Population total: 3,593

District 9	District 13
340	3,253

Silver Spring Township, Cumberland County. Population Total: 19,557

District 10	District 13
17,009	2,548

East Hanover Township, Dauphin County, Population Total: 6,019

District 11	District 11
1,370	4,649

Luzerne Borough, Luzerne County, Population Total: 2,711

District 8	District 9
1,196	1,515

Stroud Township, Monroe County, Population total: 19,834

District 7	District 8
2,898	16,936

Centre Township, Berks County, Population: 3,938

District 6	District 7
2,678	1,260

West Whiteland Township, Chester County, Population total: 19,632

District 5	District 6
10,509	9,123

CERTIFICATE OF COMPLIANCE

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

/s/ Jeffry Duffy

Jeffry Duffy (PA No. 081670)

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2022, a copy of the foregoing filing was served on all counsel of record via PACFile.

/s/ Jeffry Duffy

Jeffry Duffy (PA No. 081670)

122042.000003 4882-3764-9163

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM C. TOTH JR., ET. AL.	:	No. 1:22-cv-00208-JPW
	:	
Plaintiffs	:	
	:	
v.	:	
LEIGH M. CHAPMAN, ET. AL.	:	
	:	
Defendant	:	

DECLARATION OF HOWARD GARTLAND

Under 28 U.S.C. § 1746, I, Howard Gartland, make this declaration as follows:

1. I am a registered voter residing in the Fifth Congressional District of Pennsylvania as defined in the Carter Plan that the Pennsylvania Supreme Court “adopted” in its order of February 23, 2022.
2. I intend to vote in the 2022 Republican primary and general Congressional election and all Congressional elections thereafter.
3. I declare, certify, verify, and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Howard Gartland

 HOWARD GARTLAND

Feb 26, 2022
 Date: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM C. TOTH JR., ET AL.	:	No. 1:22-cv-00208-JPW
	:	
Plaintiffs	:	
	:	
v.	:	
LEIGH M. CHAPMAN, ET AL.	:	
	:	
Defendants	:	

DECLARATION OF SETH GROVE

Under 28 U.S.C. § 1746, I, Seth Grove, make this declaration as follows:

1. I am over 21 years of age and fully competent to make this declaration.
2. I have personal knowledge of the facts stated in this declaration, and all of the stated facts in this declaration are true and correct.
3. I am a member of the Pennsylvania General Assembly and represent Pennsylvania’s 196th legislative district.
4. On January 24, 2022, following a months-long congressional redistricting process, the Pennsylvania General Assembly approved a citizen-drawn congressional map.
5. That map was known as House Bill 2146.
6. The General Assembly passed H.B. 2146 and sent it to Governor Tom Wolf for his signature.
7. The map approved by the General Assembly approved remains largely identical to the plan submitted by Amanda Holt, a Lehigh Valley resident and redistricting-reform advocate.

8. Indeed, Governor Wolf selected Ms. Holt to serve on his Redistricting Reform Commission and the Pennsylvania Supreme Court cited her work in numerous redistricting court cases.

9. I introduced the HB 2146 following 13 public hearings, eight of which were held across the state.

10. This is the most open and transparent congressional redistricting process ever established in the General Assembly.

11. This is also the first time in the history of Pennsylvania the General Assembly selected a citizen-drawn map.

12. HB 2146 was developed without the use of political data and focused on meeting the traditional constitutional criteria of redistricting.

13. Ultimately, HB 2146 created a map of 9 Democratic-leaning districts and 8 Republican-leaning districts. Of these 17 districts, 5 are considered competitive districts.

14. Of the 17 districts, 12 have a population of 764,865, and 5 have a population of 764,864, meeting the constitutional requirement of equal populations.

15. HB 2146 considered hours of testimony, 399 public comments, and comments of interest submitted to www.PaRedistricting.com from residents of Pennsylvania.

16. The Carter map adopted by the Pennsylvania Supreme Court “was filed with the court by plaintiffs linked to the National Redistricting Action Fund, a dark money affiliate of National Democratic Redistricting Committee, while the case was

argued by Democratic attorney Marc Elias.” Stephen Caruso, Pa. *Supreme Court picks national Dems’ map as new congressional plan* - Pennsylvania Capital-Star, February 23, 2022, <https://bit.ly/3HtyDXT>

17. According to the National Redistricting Action Fund’s IRS Form 990 their purpose of the organization is “To build a comprehensive plan to favorably position Democrats for the redistricting process of 2022.” <https://bit.ly/3htUyn3>

18. This Carter map was drawn behind closed doors by a California resident without the knowledge of Pennsylvania or input of Pennsylvanians.

19. Pennsylvania has a natural political geography which creates an advantage to the Republican party.

20. Simply stated, Democrats are heavily concentrated in urban areas (the cities of Philadelphia Pittsburgh) while Republicans are spread throughout Pennsylvania (the “T”).

21. The Carter map creates 10 Democratic-leaning districts and 7 Republican Districts.

22. This is an outlier as the natural political geography of Pennsylvania creates 9 Democratic-leaning districts.

23. To reduce or eliminate the natural political geographic advantage Republicans have in Pennsylvania, the creators of the Carter map must gerrymander to eliminate that advantage.

24. The Carter map overcomes this natural geographic political advantage by using typical gerrymandering tactics to draw more advantageous lines for Democrats.

25. This is reflected in map decisions the California mapmaker made in the map design.

26. First, the Carter map was designed to be “least-change” from the 2018 map that Pennsylvania Supreme Court imposed in *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018).

27. According to the Pennsylvania Supreme Court’s special master, the Carter map that the state supreme court imposed has a partisan gerrymander favoring Democrats.

28. Two incumbent Republican Congressmen were placed in the same district: Congressman G.T. Thompson and Congressman Fred Keller.

29. In a redistricting process that requires the loss of a seat, this is expected, but unnecessary.

30. HB 2146 grouped Congressman Matthew Cartwright, a Democrat, and Congressman Dan Meuser, a Republican, together in a competitive district so that voters could decide who the next member of Congress would be—not an out-of-state mapmaker hired by a Democratic dark-money organization.

31. The population growth of Pennsylvania occurred in the southeast and southcentral parts of Pennsylvania.

32. Therefore, the 2022 map should have shifted seats toward the southeast, with rural congressional districts growing in geographical size and being pulled toward the southeast, and the suburban and urban seats in the southeast shrinking in geographical size and again being pulled toward the southeast.

33. The reverse happened in the Carter map.

34. The 4th congressional district was pulled westward into Berks County, providing a safer district for Congresswoman Madeleine Dean, a Democrat.

35. This allowed the California mapmaker, who created the Carter map, to move the Delaware County–based 5th congressional district north into Montgomery County.

36. The 2020 census population of Montgomery County is 856,553, which is 91,688 over the target population of a Pennsylvania congressional district of 764,864.

37. The only reason to move a Montgomery County–based district west into Berks County, while simultaneously moving a Delaware County–based seat north into Montgomery County, is partisan gerrymandering.

38. Further, the 6th congressional district also moved west, against the natural population trends of Pennsylvania, into Berks County, providing another gerrymandered seat for Democrats.

39. The 10th and 11th congressional districts in southcentral Pennsylvania moved west, creating a safer seat for Congressman Lloyd Smucker, a Republican, and maintaining the Democratic-gerrymandered 10th congressional district of the 2018 map, while adding more western municipalities of Cumberland County.

40. Again, these congressional districts movements heading west is against the population growth areas of Pennsylvania.

41. The 9th congressional district was gerrymandered to create a seat to pack Republicans into a district starting at the New York state border to the Lebanon County and Lancaster County line.

42. The drawing of the 7th, 8th, and 9th districts completely eviscerated the coal-country communities of interest.

43. The 12th congressional district in the Carter map creates a “Freddy Kreuger”-like claw out of the City of Pittsburgh.

44. Allegheny County has a 2020 census population of 1.25 million people, which means the county should have an entire congressional district within its borders and another partial congressional seat.

45. The Carter map creates two partial Allegheny County seats to create two safe Democratic seats.

46. Lastly, the Carter map ignores the Constitution’s equal-population rule.

47. The 1st, 5th, 8th, and 14th congressional districts in the Carter map have a population of +1 over the targeted congressional population.


48. The 3rd, 6th, 9th, 10th, 11th, 12th, 13th, 15th, and 17th congressional districts in the Carter map that the Pennsylvania Supreme Court selected have a population of –1 under the targeted congressional population.

49. The two-person deviation flies in the face of the one-person, one-vote principle and is blatantly unconstitutional.

50. Also of note, most of the +1 congressional districts are Democratic-leaning districts and most of the -1 congressional districts are Republican leaning.

51. Using population deviation is another gerrymandering tool when a mapmaker can maximize the population in certain districts and minimize the population in other districts to crack and pack voters for partisan outcomes.

52. I declare, certify, verify, and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Seth Grove (Feb 27, 2022 16:22 EST)

SETH GROVE

Date: Feb 27, 2022

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

William C. Toth Jr., et al.
Plaintiffs,
v.
Leigh M. Chapman, et al.,
Defendants

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

NOTICE OF APPEAL

William C. Toth Jr., William J. Hall, Howard Gartland, James Bognet, Aaron Bashir, and Alan M. Hall appeal to the Supreme Court of the United States from this Court's order of February 25, 2022, denying the plaintiffs' request for immediate injunctive relief (ECF No. 43).

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 28, 2022

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on February 28, 2022, I filed this document on CM/ECF, which will effectuate service upon the following counsel of record:

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
rwiygul@hangley.com
crice@hangley.com
jhill@hangley.com

JOSHUA A. MATZ
Kaplan, Hecker & Fink
1050 K Street NW, Suite 1040
Washington, DC 20001
(929) 294-2537
jmatz@kaplanhecker.com

Counsel for Defendants

ABHA KHANNA
LALITHA D. MADDURI
JYOTI JASRASARIA
TINA Y. MENG
Elias Law Group LLP
1700 Seventh Ave., Suite 2100
Seattle, Washington 98101
(206) 656-0177
akhanna@elias.law
lmadduri@elias.law
jjasrasaria@elias.law
tmeng@elias.law

ELIZABETH WINGFIELD
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103
(215) 665-8500 (phone)
(215) 864-8999 (fax)
wingfelde@ballardspahr.com

Counsel for Proposed Intervenors

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

CERTIFICATE OF SERVICE

I certify that a copy of this document has been sent by e-mail on February 28, 2022, to the following counsel of record in this case:

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
rwiygul@hangley.com
crice@hangley.com
jhill@hangley.com

JOSHUA A. MATZ
Kaplan, Hecker & Fink
1050 K Street NW, Suite 1040
Washington, DC 20001
(929) 294-2537
jmatz@kaplanhecker.com

Counsel for Defendants

ABHA KHANNA
LALITHA D. MADDURI
JYOTI JASRASARIA
TINA Y. MENG
Elias Law Group LLP
1700 Seventh Ave., Suite 2100
Seattle, Washington 98101
(206) 656-0177
akhanna@elias.law
lmadduri@elias.law
jjasrasaria@elias.law
tmeng@elias.law

ELIZABETH WINGFIELD
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103
(215) 665-8500 (phone)
(215) 864-8999 (fax)
wingfelde@ballardspahr.com

Counsel for Proposed Intervenors

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