

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; <i>et al.</i> ,	)	
	)	
Petitioners,	)	
	)	
v.	)	NO. 464 M.D. 2021
	)	
VERONICA DEGRAFFENREID; <i>et al.</i> ,	)	
	)	
Respondents.	)	

PHILLIP T. GRESSMAN; <i>et al.</i> ,	)	
	)	
Petitioners,	)	
	)	
v.	)	NO. 465 M.D. 2021
	)	
VERONIC DEGRAFFENREID; <i>et al.</i> ,	)	
	)	
Respondents.	)	

**APPLICATION FOR INTERVENTION**  
**OF PENNSYLVANIA SENATORS COLLETT, MUTH, STREET AND WILLIAMS**

Pursuant to this Court’s December 22, 2021 Per Curiam Order and Rule of Appellate Procedure 1531(b), Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams (collectively “Proposed Intervenors”) seek leave to intervene in the above-referenced matters (“Action”).

The Proposed Intervenors seek to intervene in the Action to protect their constitutional and legislative role in drawing and developing a reapportionment plan in response to the United States’ 2020 census data. In support of its Application for Intervention, the Proposed Intervenors state as follows:

## **PROPOSED INTERVENORS**

1. Maria Collett is a State Senator from the 12<sup>th</sup> Senatorial District in Montgomery and Bucks Counties. Senator Collett is a member of the State Government Committee of the Pennsylvania Senate. She is also a resident and registered voter in Montgomery County, and a prospective candidate for reelection in 2022.

2. Katie J. Muth is a State Senator from the 44<sup>th</sup> Senatorial District in Chester, Montgomery, and Berks Counties. She is also a resident and registered voter in Montgomery County, and a prospective candidate for reelection in 2022.

3. Sharif Street is a State Senator from the 3<sup>rd</sup> Senatorial District in Philadelphia County. He is a resident and registered voter in Philadelphia.

4. Anthony H. Williams is a State Senator from the 8<sup>th</sup> Senatorial District in Philadelphia and Delaware Counties. He is a resident and registered voter in Philadelphia, a voter, and a prospective candidate for reelection in 2022.

5. Senators Collett, Muth, Street, and Williams are all of the members of the Democratic Party on the State Government Committee of the Pennsylvania Senate. Senator Street serves as the Democratic Chair.

## **CURRENT ELECTION DEADLINES, PETITIONER'S CLAIMS, AND BASES TO INTERVENE**

### **Constitutional and Legislative Authority**

6. As this Court is aware, Article 1, Section 2 of the United State Constitution requires that a census be taken every 10 years for the purpose of apportioning the United States House of Representatives. The Constitution delegates that task to state legislatures. U.S. Const. art. I, § 4 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.”) (emphasis added). Consistent with

Pennsylvania's constitution, Pennsylvania's congressional districts are drawn by the state legislature as an act, subject to veto by the Governor. Pa. Const. Art. III, § 4, Pa. Const. Art. IV, § 15.

7. As with all acts, the Congressional redistricting plan starts in one house in committee, is finally adopted, moves to the other body where it moves through committee, and eventually, after both bodies concur in language, is presented to the Governor for his signature. If the legislation is vetoed it is, of course, subject to a potential override.

8. In August 2021, the United State Secretary of Commerce delivered census-block results of the 2020 Census to the Pennsylvania Governor and legislative leaders. The census data confirmed that Pennsylvania will be allocated only 17 Members in the next Congress, one fewer than currently allotted. The data was further processed and only in a form that would support commencement of the mapmaking process in late-October 2021.

9. Because of the delay in the census caused by the pandemic, the entire process has been truncated in 2021-22. However, it is the intention of the Proposed Intervenors, and (as they understand it) their colleagues in the Legislature to adopt such legislation in time for presentation to the Governor for signature in January, or in any event, for signature no later than February 7, subject to theoretical changes to the election timeline discussed below.

10. Under the current election schedule, the 2022 primary will occur on May 17, 2022. *See* 25 P.S. § 2753(a). For a May 17 election, the first day to circulate and file nomination petitions will be February 15, 2022. *See* 25 P.S. § 2868.

11. Although the Department of State has announced that it would like to have 21 days between adoption of a map and commencement of petition circulation, that period is not statutory or required. It apparently represents what the Department believes is a best practice. However, the

process of generating petitions already exists, or they could revert to candidate-typed petitions, and a 21-day window is not necessarily required.

12. If mapmaking is further delayed, the General Assembly has within its authority an alternative solution—to delay the 2022 primary and thereby extend the deadline for a map. Although such a delay is not currently desired by the Proposed Intervenors or, to their knowledge, their legislative colleagues, a postponed primary was adopted in 2020 and could be adopted again.

13. Notwithstanding the facts on the ground, or the language of the relevant Constitutions, Petitioners in this Action seek, as they have sought for almost a year, to prematurely shift the power to draw the maps from the constitutionally designated authority because of a foreshadowing belief that Pennsylvania courts will have to become mapmakers.

14. In so doing, Petitioners would interfere with and circumvent the responsibilities and duties of the General Assembly. It is the intention of the Proposed Intervenors, and to their knowledge and belief, the majority of their colleagues in both bodies (and of both parties) to fulfill their constitutional responsibility and adopt a map through legislation.

15. The Proposed Intervenors are the four Democratic members of the Senate's State Government Committee, the committee with jurisdiction over the map-drawing legislation.

16. The Senate State Government Committee is in the process, on a bipartisan basis, of running an open, inclusive, and transparent mapmaking process.

17. It is well-settled that the “initial and preferred path [regarding drawing congressional maps is through] legislative and executive action.” *League of Women Voters*, 178 A. 3d at 821. However, if the General Assembly and Governor fail to timely approve a new congressional map, the Pennsylvania judiciary may eventually implement one. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992).

18. The Proposed Intervenors recognize and understand that courts have a role to play in enacting a congressional reapportionment plan but the courts' role must necessarily be one only of last resort. The courts may intercede only if the General Assembly and the Governor fail to timely adopt a reapportionment plan. *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 822 (Pa. 2018) (“[I]f the legislature and executive timely enact a remedial plan . . . , our role in this matter concludes, unless and until the constitutionality of the new plan is challenged.”).

19. Though the 2022 election deadlines are approaching, Petitioners' claims come too soon and prematurely seek to circumvent the General Assembly's, and the Proposed Intervenors', constitutional authority. The General Assembly has not yet failed to meet the required deadlines to produce a new congressional map, nor has there been a gubernatorial impasse.

20. Rather, the General Assembly is in the process of drawing Pennsylvania's 17-member congressional map. On December 15, 2021, the House State Government Committee approved House Bill 2146. The map from House Bill 2146 is unacceptable to the Proposed Intervenors, but the bill is a vehicle for the constitutional process to conclude in sufficient time.

21. The members of the Senate State Government Committee are engaged in the process of drawing Pennsylvania's congressional map and the Proposed Intervenors are actively participating in that process. While there is not yet agreement, the constitutionally-mandated process continues.

22. The Courts may one day play a role in the 2022 reapportionment plan but that day has not yet come, and may never come.

23. Proposed Intervenors are working towards the General Assembly and the Governor enacting a new Congressional map by the January 30 date, thereby eliminating the need for a hearing or for this Court to select a reapportionment plan submitted by interested parties.

24. If, however, this does not occur, the Proposed Intervenors, as the Democratic leads on congressional reapportionment, and having spent months collecting input from citizens and experts, and working to understand the communities of interest across the Commonwealth, expect that they would submit a proposed map to this Court and otherwise participate in the tentatively scheduled January 31 hearing.

25. Absent permitted intervention, the General Assembly and every member of the Senate Democratic Caucus would risk being eliminated entirely from a critical constitutional responsibility.

WHEREFORE, for the reasons set forth above, the Proposed Intervenors respectfully request the Court's permission to intervene in this Action.

Respectfully submitted,



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