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464 MD 2021 and additional consolidated case(s)

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
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	: :

CARTER PETITIONERS' RESPONSE TO THE APPLICATION TO INTERVENE BY VOTERS OF THE COMMONWEALTH OF PENNSYLVANIA

Pursuant to this Court's scheduling order, the *Carter* Petitioners hereby oppose the application to intervene filed by Haroon Bashir, Valerie Biancaniello, Tegwyn Hughes, and Jeffrey Wenk ("Proposed Voter Intervenors").

Proposed Voter Intervenors seek to join the case as Petitioners alongside the *Carter* and *Gressman* Petitioners, asserting the same claims and requested relief as the existing Petitioners. However, in a substantially similar case that the *Carter* Petitioners filed last year, Proposed Voter Intervenors took the opposite position.[1] There, they applied to intervene as *Respondents*, renouncing the very claims they now make, Ex. 1 ¶ 59, and contending that this Court could not lawfully grant the relief they now seek, Ex. 1 at Ex. A ¶¶ 28-37. Because the Commonwealth Court denied that application, *see* Ex. 2, Proposed Voter Intervenors are trying a different tack this time around.

[1] Proposed Voter Intervenors are also represented by the same counsel as they were in the first *Carter* litigation. *See* Ex. 1.

Even assuming that Proposed Voter Intervenors now meet the standard for intervention under Rule 2327,[2] this Court may deny intervention if their interests are already adequately represented in the litigation, or if the intervention would "unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties." Pa. R.C.P. 2329; *Wilson v. State Farm Mut. Auto. Ins. Co.*, 512 Pa. 486, 492, 517 A.2d 944, 947 (1986) (explaining, under Rules 2327 and 2329, "a mere prima facia basis for intervention is not enough . . ." and that Rule 2329 can otherwise preclude intervention to a party who has already shown a legally enforceable interest).

Proposed Voter Intervenors do not adequately explain why the parties in the case do not already adequately represent their interests—they appear to merely assume that the parties in the litigation, as well as this Court, do not have an interest in implementing a map that is lawful under the state and federal constitutions. But such an assumption is belied by the legal presumption that the Court will act with regularity, in accordance with the law, and without violating the rights of citizens. *See, e.g.*, *Albert v. Lehigh Coal and Navigation Co.*, 246 A.2d 840, 845 n.5 (Pa. 1968) ("There is a *prima facie* presumption of the regularity of the acts of public

[2] Proposed Voter Intervenors incorrectly assert that "a person seeking to intervene in a proceeding need have only an 'interest of such nature that participation . . . may be in the public interest.'" App. ¶ 38 (citing *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1288-89 (Pa. Commw. Ct. 2019)). As the *Carter* Petitioners previously argued, and the Commonwealth Court previously agreed, this argument both mischaracterizes *Sunoco* and, more critically, relies on the more lenient standard for initiating a complaint before Pennsylvania's Public Utility Commission, not intervention in its civil courts. *See* Ex. 2 at 9 n.9.

officials which exists until the contrary appears[.]"). Simply put, the Commonwealth Court has no interest or incentive to adopt a gerrymandered or otherwise unconstitutional congressional plan.

Furthermore, it cannot be that *any* voter must be allowed to intervene simply because "*[e]very elector* … has an interest in redrawing a congressional district map that meets constitutional standards." App. ¶ 29 (quoting Ex. 2 at 18). That would unnecessarily complicate and unduly delay a case that must be adjudicated expeditiously. *See E. Am. Transp. & Warehousing, Inc. v. Evans Conger Broussard & McCrea, Inc.*, No. 2187, 2002 WL 1803718, at *4 (Pa. Ct. Com. Pl. July 31, 2002) (denying intervention under Rule 2329(3) where there were already many parties in the case and allowing intervention "would unnecessarily delay and complicate" the case); *see also Erfer*, 568 Pa. at 132 (Pennsylvania Supreme Court ordered Commonwealth Court to hear redistricting claims on an expedited basis and produce findings of fact and conclusions of law within two weeks of the Court's order).

For these reasons, rather than reward Proposed Voter Intervenors' clear attempts at gamesmanship and open the floodgates to yet another set of parties, this Court should exercise its discretion to deny Proposed Voter Intervenors' application to intervene.

Dated: January 4, 2022

Respectfully submitted,

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 Posimato*
Raisa 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

/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 Memorandum in Opposition to the Application to Intervene by the Citizen-Voter Intervenors to be served upon the following parties and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

By first class mail:

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

By PACFile eService:

All counsel of record as set forth in the PACFile proof of service filed herewith

Dated: January 4, 2022

/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 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER, *et al.*, Petitioners, v. VERONICA DEGRAFFENREID, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania, *et al.*, Respondents.	No. 132 MD 2021

APPLICATION FOR LEAVE TO INTERVENE BY VOTERS OF THE COMMONWEALTH OF PENNSYLVANIA

Pursuant to Pennsylvania Rules of Appellate Procedure 106 and 1531(b) and Pennsylvania Rules of Civil Procedure 2326 through 2329, Proposed Voter Intervenors, each of whom are citizens of and registered consistent voters in the Commonwealth of Pennsylvania ("Proposed Voter Intervenors") respectfully submit this Application for Leave to Intervene in the above captioned matter filed by Petitioners.

I. PRELIMINARY STATEMENT

1. The Petitioners seek to further truncate what may already be the shortest ever timeframe for the General Assembly and Governor to implement a redistricting plan following the decennial census.

2. Bemoaning the split control of the legislative and executive branches by the Republican and Democratic Parties, Petitioners invite the Court to simply assume that compromise will be impossible and to cut out the political bodies designed by the United States and Pennsylvania Constitutions to do the work of redistricting.

3. The Petition for Review is not only premature, but it also requests relief that cannot be afforded: a new congressional map is not needed until the first day to circulate nominating petitions (February 15, 2022, *see* 25 P.S. § 2868). The elected representatives mandated by the Constitution to draw the congressional map must be afforded a full opportunity to do so.

4. The Proposed Voter Intervenors are comprised of individuals who have invested significant time, resources, and effort to support and recruit Republican congressional candidates.

5. Equally important, however, these Proposed Voter Intervenors voted in the 2020 election, whereby they elected representatives to the Pennsylvania House of Representatives and Senate. The Proposed Voter Intervenors' duly elected representatives are tasked under the United States and Pennsylvania Constitutions with implementing the new congressional redistricting plan.

6. The relief sought by the Petitioners would substantially deprive the Proposed Voter Intervenors of their material interest in having their local, duly elected representatives act on their behalf in drawing the new congressional lines.

7. Instead, the Petitioners would have the Court prematurely subvert the legislative process which has successfully redrawn nearly every congressional map in Pennsylvania.

8. In so doing, the Petitioners would replace "the institution that is by far the best suited to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality" (the General Assembly) with an institution that "possess[es] no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name," *Connor v. Finch*, 431 U.S. 407, 414–15 (1977), to the Proposed Voter Intervenors' detriment.

9. The Proposed Voter Intervenors thus request leave of Court to oppose the relief sought by the Petitioners and defend their interest in having their state Representatives and Senators represent their interests when attempting to implement a new congressional redistricting plan.

II. BACKGROUND

A. Proposed Voter Intervenors

10. Proposed Voter Intervenor Haroon Bashir resides in Philadelphia, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each election. Mr. Bashir voted for his State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Mr. Bashir resides in the 2nd Congressional District and intends to vote in the 2022 elections as well.

11. Proposed Voter Intervenor Valerie Biancaniello resides in Broomall, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each election. Ms. Biancaniello voted for her State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Ms. Biancaniello resides in the 5th Congressional District and intends to vote in the 2022 elections as well.

12. Proposed Voter Intervenor Debra A. Biro resides in Nazareth, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each election. Ms. Biro voted for her State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would

have the authority to enact a new congressional redistricting plan based on the 2020 census data. Ms. Biro resides in the 7th Congressional District and intends to vote in the 2022 elections as well.

13. Proposed Voter Intervenor Tegwyn Hughes resides in Bangor, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each election. Ms. Hughes voted for her State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Ms. Hughes resides in the 7th Congressional District and intends to vote in the 2022 elections as well.

14. Proposed Voter Intervenor James D. Bee resides in Johnstown, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each election. Mr. Bee voted for his State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Mr. Bee resides in the 13th Congressional District and intends to vote in the 2022 elections as well.

15. Proposed Voter Intervenor Richard L. Lawson resides in Finleyville, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each election. Mr. Lawson voted for his State Representative and Senator with the

expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Mr. Lawson resides in the 14th Congressional District and intends to vote in the 2022 elections as well.

16. Proposed Voter Intervenor David Dillon resides in North Cambria, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each election. Mr. Dillon voted for his State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Mr. Dillon resides in the 15th Congressional District and intends to vote in the 2022 elections as well.

17. Proposed Voter Intervenor Rico Timothy Elmore resides in Rochester, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each election. Mr. Elmore voted for his State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Mr. Elmore resides in the 17th Congressional District and intends to vote in the 2022 elections as well.

18. Proposed Voter Intervenor Barbara Steinour resides in Sewickley, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each

election. Ms. Steinour voted for her State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Ms. Steinour resides in the 17th Congressional District and intends to vote in the 2022 elections as well.

19. Proposed Voter Intervenor James Curtis Jarrett resides in Pittsburgh, Pennsylvania, and is a registered Pennsylvania voter who consistently votes in each election. Mr. Jarrett voted for his State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Mr. Jarrett resides in the 18th Congressional District and intends to vote in the 2022 elections as well.

20. Proposed Voter Intervenor Jeffrey Wenk resides in Upper St. Clair, Pennsylvania, is a registered Pennsylvania voter who consistently votes in each election. Mr. Wenk voted for his State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Mr. Wenk resides in the 18th Congressional District and intends to vote in the 2022 elections as well.

21. Proposed Voter Intervenor Donald Beishl, Jr. resides in Langhorne, Pennsylvania, is a registered Pennsylvania voter who consistently votes in each election. Mr. Beishl voted for this State Representative and Senator with the expectation that as members of the Pennsylvania General Assembly, they would have the authority to enact a new congressional redistricting plan based on the 2020 census data. Mr. Beishl resides in the 1st Congressional District and intends to vote in the 2022 elections as well.

22. The Elections Clause of the United States Constitution grants to the Legislatures of each state the power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives." *See* U.S. CONST. art. I § 4. Thus, under the Elections Clause, the Pennsylvania General Assembly alone is vested with the obligation to redistrict the Commonwealth.

23. Article VII of the Pennsylvania Constitution vests "every citizen" possessing the required qualifications, to vote in "all elections" to exercise this inalienable right by electing to office, *inter alia*, his or her representatives to the U.S. Congress and the Pennsylvania General Assembly, with the expectation that each will perform its constitutionally mandated roles in accordance with the separation of powers of each branch of government. PA. CONST. art. VII, § 2.

24. Inherent in any "free and equal election" is the possibility that the people's lawful exercise of their vote may result in the various branches of

government being politically split with the legislative branch controlled by one political party, and the executive branch controlled by another.

25. Such a result, however, is the constitutionally permissible result of a free election and does not divest either branch of the obligation to carry out its constitutionally mandated duties.

26. Nor does a split in control of the various branches of government invest the judiciary with the right to usurp the authority and function of either the legislative or executive branches. To do so would nullify each vote cast for each legislator as well as governor and would consign to the judiciary authority which it was not elected to hold and is not, except in highly limited circumstances not present here, constitutionally empowered to carry out.

27. Yet, that is exactly the result Petitioners seek. This action is predicated upon Petitioners' speculation that a Republican-controlled General Assembly and a Democratic Governor with veto power "are highly likely to be at an impasse this cycle and to fail to enact a new congressional plan." Petition ¶ 33. From that premise, and before the General Assembly even has the Census data required to enact a new congressional plan, Petitioners seek to divest both the General Assembly and the Governor of the opportunity to carry out the constitutional duties for which the voters of the Commonwealth elected them. Petitioners' requested relief would nullify the choice of the voters of Pennsylvania, including those of the Proposed

Voter Intervenor Votes, who in November 2020 once again elected a Republican majority to both chambers of the Pennsylvania General Assembly, denying the voters of their right to representation in the matter of redistricting.

B. Procedural History

28. The Petitioners commenced this action on April 26, 2021, by filing the Petition addressed to the Court's original jurisdiction.

29. To date, the Respondents have not filed a response to the Petition; the Court extended the Respondents' response deadline to July 1, 2021.

III. STANDARD FOR INTERVENTION

30. In an original jurisdiction petition for review, a nonparty may file an application for leave to intervene. Pa. R.A.P. 1531(b).

31. "The right to intervention should be accorded to anyone having an interest of his own which no other party on the record is interested in protecting." *Keener v. Zoning Hearing Bd. of Millcreek Twp.*, 714 A.2d 1120, 1123 (Pa. Commw. Ct. 1998) (citing *Bily v. Bd. of Property Assessment, Appeals and Review of Allegheny Cty.*, 44 A.2d 250 (Pa. 1945)).

32. Pennsylvania law affords a party an absolute right to intervene in an action if the party can satisfy any one of the categories specified in Pa. R. Civ. P. 2327. Pa. R. Civ. P. 2329; *see also Larock v. Sugarloaf Township Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999).

33. The standards for intervention under Pennsylvania Rules of Civil Procedure 2326 through 2329 apply to an original jurisdiction petition for review because Pennsylvania Rule of Appellate Procedure 106 applies the "general rules" for practice in the courts of common pleas—namely, the Rules of Civil Procedure—"so far as they may be applied."

34. Voter Intervenors seek to intervene under Pennsylvania Rule of Civil Procedure 2327(3) and (4), which provide in pertinent part:

> At any time during the pendency of an action, a person not a party thereto *shall be permitted to intervene therein*, subject to these rules *if*
>
> (3) such person could have joined as an original party in the action or could have been joined therein; or
>
> (4) *the determination of such action may affect any legally enforceable interest of such person* whether or not such person may be bound by a judgment in the action.

Pa. R.C.P. No. 2327(3), (4) (emphasis added); *see also Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*, No. 26 M.D. 2019, 2020 Pa. Commw. LEXIS 104, 2020 WL 424866, at *5 (Pa. Commw. Ct. Jan. 28, 2020) ("Pennsylvania Rule of Civil Procedure No. 2327(4) . . . permits intervention where the determination '*may affect* any legally enforceable interest' of a proposed intervenor." (quoting Pa. R.C.P. No. 2327(4) and emphasis in original)).

35. If the determination may affect the intervenor's legally enforceable interest, and no exception applies, approving intervention is mandatory, not

discretionary. *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999).

36. Moreover, the Court may, in its discretion, allow intervention even if it determines that one of the Rule 2329 exceptions applies. *See* Pa. R.C.P. 2329 (instructing that "an application for intervention *may* be refused" if an exception applies (emphasis added)); *see also* 7 Goodrich Amram 2d § 2329:7 ("Even though the petitioner's interest is adequately represented in the pending action, this fact does not mandate the refusal of intervention since the refusal of intervention on the ground of the adequacy of the representation is permissive in nature.").

37. The Court should grant the Voter Intervenors' application to intervene because the Court's determination of this action may affect the Voter Intervenors' legally enforceable interests, no exception applies under Pennsylvania Rule of Civil Procedure 2329, and the Voter Intervenors' participation will aid the Court. Further, the Voter Intervenors could have joined as original parties in this action.

IV. BASIS FOR PROPOSED INTERVENTION

A. The Voter Intervenors Have Substantial Interests in This Action

38. The Voter Intervenors have a substantial and particularized interest in preserving the existing framework under which the General Assembly and Governor have until the first day to circulate nominating petitions for Congress to implement a redistricting plan.

39. Courts in Pennsylvania have permitted Republican voters to intervene in challenges to the laws governing Pennsylvania's elections. *See League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 741 n.5 (Pa. 2018).

40. Courts have recognized that intervention is "uniquely" appropriate where the proposed intervenor represents the "'mirror-image' interests of the plaintiffs" who brought the lawsuit. *Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249-wmc, 2020 U.S. Dist. LEXIS 76765, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (quoting *Builders Ass'n of Greater Chicago v. Chicago*, 170 F.R.D. 435, 441 (N.D. Ill. 1996)).

41. Proposed Voter Intervenors represent the "mirror-image" of the Petitioners insofar as the Petitioners aver that they are Pennsylvania registered voters who "intend to advocate and vote for Democratic candidates in the upcoming 2022 primary and general elections," Pet. ¶ 11, while the Proposed Voter Intervenors intend to advocate and vote for Republican candidates in the upcoming 2022 primary and general elections.

42. Unlike the Petitioners, however, the Proposed Voter Intervenors seek to preserve not only the existing deadline for Pennsylvania's legislative and executive branches to redraw the congressional map, but to seek to preserve their own rights to representation in the redistricting process.

43. Indeed, if the Petitioners' requested relief is granted, it will result in the curtailing of the ability of the duly elected Republican-majority General Assembly, the sole branch of government in Pennsylvania which is constitutionally mandated to redistrict the Commonwealth and comprised of representatives elected by the Proposed Voter Intervenors, to represent the Proposed Voter Intervenors' interests in implementing a congressional redistricting plan. Instead, this power would be placed in the hands of the judiciary, where elected Democrat Justices hold a substantial majority in the Supreme Court.

44. Petitioner's requested relief would have the effect of diminishing or nullifying the effect of the Proposed Voter Intervenors' votes for their state representatives and senators in the 2020 election, taking away the constitutionally mandated duty of redistricting from the local officials with more intimate familiarity with the constituents and their interests and putting it in the hands of statewide-elected judges who are ill-suited to the task of redistricting. *See Connor v. Finch*, 431 U.S. 407 (1977).

45. As held by this Court in *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Commw. 2019), "the inquiry to determine whether a party has standing to initiate litigation is different than the inquiry to determine whether a party can intervene in existing litigation." An individual seeking to intervene in an action need

only establish "an interest of such nature that participation … may be in the public interest." *Id.* at 1288–89.

46. As the interests of Proposed Voter Intervenors are of such nature that their participation in this matter may be in the public interest, their intervention is mandatory pursuant to Pa. R.C.P. 2327(4). *See Larock v. Sugarloaf Township Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. 1999).

47. The Proposed Voter Intervenors voted for their legislators in the Pennsylvania General Assembly. In doing so, each Proposed Voter Intervenor is guaranteed representation in the General Assembly with respect to all matters within its Article III powers, including but not limited to, the enactment of legislation. PA. CONST. art. III, § 1.

48. Insofar as the enactment of a new congressional redistricting plan is primarily a legislative function, and as each of the Proposed Voter Intervenors and the public at large has an interest in the contours of their congressional districts, each of the Proposed Voter Intervenors has the inalienable right to express to his or her State Senator or Representative, his or her concerns or input regarding the drawing of the various congressional districts.

49. The Pennsylvania Supreme Court recently acknowledged that "it becomes the judiciary's role to determine the appropriate redistricting plan" only when "the legislature is unable or chooses not to act." *League of Women Voters v.*

Commonwealth, 178 A.3d 737, 821–22 (Pa. 2018); *see also* Pet. ¶ 5 (quoting *League of Women Voters*). But here, the Petitioners are attempting to sidestep this precondition by further restricting the General Assembly's time to determine a redistricting plan. Indeed, the official redistricting data from which a new redistricting plan will be prepared will not be released until August 16.

50. If Petitioners are successful in this litigation, the Pennsylvania General Assembly will be divested of its authority to draw the new congressional districts and the process will become a judicial process, not the constitutionally mandated legislative process. Resultantly, Proposed Voter Intervenors will be deprived of their right to representation in the drawing of the new plan as the authority to do so will be transferred to the judiciary who are not the duly elected representatives for Proposed Voter Intervenors and to whom Proposed Voter Intervenors have no ability to provide their input, thus depriving Proposed Voter Intervenors and the public at large of their right to representation in this crucial legislative process.

51. As such, the votes cast by Proposed Voter Intervenors and indeed Pennsylvania voters at large who in November 2020 elected a Republican-led majority to both chambers of the Pennsylvania General Assembly would be nullified with respect to the redistricting process.

52. Further, a newly enacted redistricting plan is subject to legal challenges by the citizens of the Commonwealth. *See, e.g.*, *League of Women Voters of Pa. v.*

Commonwealth, 178 A.3d 737 (Pa. 2018). If the Court is permitted to act as a quasi-General Assembly and draws the new congressional map on its own, the due process rights of Proposed Voter Intervenors to challenge the Court-drawn plan may be severely limited.

B. There Is No Basis to Refuse the Voter Intervenors' Application for Leave to Intervene

53. Pennsylvania Rule of Civil Procedure 2329 provides that an application for intervention may be refused if: (1) the petitioner's claim or defense "is not in subordination to and in recognition of the propriety of the action"; (2) the petitioner's interest is already adequately represented; or (3) "the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties."

54. None of these factors applies to the Proposed Voter Intervenors.

55. First, the Proposed Voter Intervenors' defense in this action is in subordination to and in recognition of the action's propriety.

56. Second, no existing party adequately represents the Proposed Voter Intervenors' particularized interests. *See* Pa. R.C.P. No. 2329(2). The Respondents, the Acting Secretary of the Commonwealth of Pennsylvania and the Director of the Pennsylvania Bureau of Election Services and Notaries, are political appointees who do not represent the Proposed Voter Intervenors' interests in this case. The Respondents are participating in this action in their official capacity, and thus do not

represent the unique interests of the Proposed Voter Intervenors, who voted for Republican local officials in the 2020 election to represent their interests in the redistricting process and who will be expending time, effort, and resources in the 2022 congressional elections. The Respondents do not share the same interest with Proposed Voter Intervenors who seek to protect their individual right to vote, to have that vote counted and to protect their individual rights to representation in the redistricting process.

57. Third, the Proposed Voter Intervenors have not unduly delayed the submission of their application to intervene in this action, which remains in its infancy. The Respondents have not yet filed a responsive pleading to the Petition (that deadline having been extended to July 1). No briefing schedule has been set for the other Proposed Voter Intervenors' applications to intervene or the preliminary objections they intend to file. Thus, the Proposed Voter Intervenors' intervention will not cause any undue delay, embarrassment, or prejudice to any party, but their intervention will aid the court in resolving the important legal and factual questions before it.

V. CONCLUSION

58. For the reasons set forth above, the Voter Intervenors have a clear right to intervene in this case challenging important state laws governing the redistricting of Pennsylvania's congressional seats.

59. Proposed Voter Intervenors seek to intervene as Respondents in this action and will assert various defenses to the Petition but will not raise claims against Respondents.

60. If granted leave to intervene, Proposed Voter Intervenors intend to file the Preliminary Objections attached as Exhibit A.

WHEREFORE, Proposed Voter Intervenors respectfully request that this Honorable Court enter an Order granting the Proposed Application to Intervene in this matter together with any other relief the Court deems to be appropriate or necessary.

Respectfully submitted,

GALLAGHER GIANCOLA LLC

Dated: June 18, 2021

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher
PA #37950
kag@glawfirm.com
Russell D. Giancola
PA #200058
rdg@glawfirm.com

3100 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
412.717.1900 (Phone)
412.717.1901 (Fax)

Counsel for Intervenor-Respondents Haroon Bashir, Vallerie Biancaniello, Debra A. Biro, Tegwyn Hughes, James D. Bee, Richard L. Lawson, David Dillon, Rico Timothy Elmore, Barbara Steinour, James Curtis Jarrett, Jeffrey Wenk, and Donald W. Beishl, Jr.

Exhibit A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER, *et al.*, Petitioners, v. VERONICA DEGRAFFENREID, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania, *et al.*, Respondents, v. HAROON BASHIR, VALLERIE BIANCANIELLO, DEBRA BIRO, TEGWYN HUGHES, JAMES BEE, RICHARD LAWSON, DAVID DILLON, RICO TIMOTHY ELMORE, BARBARA STEINOUR, JAMES CURTIS JARRETT, JEFFREY WENK, and DONALD BEISHL, JR., Intervenor-Respondents.	No. 132 MD 2021

NOTICE TO PLEAD

To Petitioner:

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.

Dated: June 18, 2021

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher
Russell D. Giancola
Gallagher Giancola LLC

Counsel for Intervenor-Respondents Haroon Bashir, Vallerie Biancaniello, Debra A. Biro, Tegwyn Hughes, James D. Bee, Richard L. Lawson, David Dillon, Rico Timothy Elmore, Barbara Steinour, James Curtis Jarrett, Jeffrey Wenk, and Donald W. Beishl, Jr.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER, *et al.*, Petitioners, v. VERONICA DEGRAFFENRIED, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania, *et al.*, Respondents, v. HAROON BASHIR, VALLERIE BIANCANIELLO, DEBRA BIRO, TEGWYN HUGHES, JAMES BEE, RICHARD LAWSON, DAVID DILLON, RICO TIMOTHY ELMORE, BARBARA STEINOUR, JAMES CURTIS JARRETT, JEFFREY WENK, and DONALD BEISHL, JR., Intervenor-Respondents.	No. 132 MD 2021

VOTER RESPONDENTS' PRELIMINARY OBJECTIONS TO PETITION FOR REVIEW

Pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure, Intervenor-Respondents Haroon Bashir, Vallerie Biancaniello, Debra A. Biro, Tegwyn Hughes, James D. Bee, Richard L. Lawson, David Dillon, Rico Timothy Elmore, Barbara Steinour, James Curtis Jarrett, Jeffrey Wenk, and Donald Beishl,

Jr. ("Voter Respondents") file these Preliminary Objections to the Petition for Review ("Petition"), and state as follows:

I. PRELIMINARY STATEMENT

When the General Assembly and Governor face an unprecedently short timeframe to draw a new congressional map, the Petitioners ask the Court to further shorten their time by imposing arbitrary and legally unsupported deadlines to remedy alleged harms that may never come to fruition. The Petitioners have jumped the gun, rushing to the Court with a proposed remedy for a problem that might—but might not—arise in the future. The claims set forth in the Petition are unripe for two reasons: (1) Petitioners assume that the Republican-controlled General Assembly and the Democratic Governor are incapable of reaching a compromise before the deadline to circulate nomination petitions and (2) Petitioner's allegations regarding the shift in population within Pennsylvania are based upon the American Community Survey, a 2019 estimate which cannot be used to achieve population equality in congressional redistricting. And Petitioner's proposed remedy is fashioned from whole cloth: the Court cannot impose an earlier deadline to complete the redistricting process (or any part of same) when no constitutional or statutory provision so permits.

Rather than litigate Petitioners' unripe claims or entertain their request to exercise powers it lacks, the Court should dismiss the Petition for Review and allow the legislative process to run its course.

II. PRELIMINARY OBJECTIONS

1. Pennsylvania Rule of Civil Procedure 1028(a) provides that "[p]reliminary objections may be filed by any party to any pleading" based upon grounds including "failure of a pleading to conform to law" and "legal insufficiency of a pleading (demurrer)." Pa. R. Civ. P. 1028(a)(2), (4).

2. Rule 1028 is applicable to this original jurisdiction matter pursuant to Pennsylvania Rule of Appellate Procedure 106. *See also* Pa. R.A.P. 1516(b) (providing for the filing of preliminary objections in response to a petition for review addressed to the Court's original jurisdiction).

A. Petitioners Lack Standing, Pa. R.C.P. 1028(a)(4)

3. Voter Respondents hereby incorporate all foregoing paragraphs as if they were fully set forth herein.

4. "[A] party has standing where that party is 'aggrieved.'" *Erfer v. Commonwealth*, 794 A.2d 325, 329 (Pa. 2002) (citing *In re T.J.*, 739 A.2d 478, 481 (Pa. 1999).

5. "For a party to be aggrieved, it must have: 1) a substantial interest in the subject matter of the litigation; 2) the party's interest must be direct; and 3) the

interest must be immediate and not a remote consequence of the action." *Id.* (quoting *In re T.J.*, 739 A.2d at 481); *accord Albert*, 790 A.2d at 994–95.

6. "A 'substantial interest' is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law." *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003).

7. "A 'direct' interest requires a showing that the matter complained of caused harm to the party's interest." *Id.* "An 'immediate' interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it." *Id.*

8. The Petitioners' interest in this litigation is neither direct nor immediate. The Petitioners' action relates to the composition of congressional districts which will be the subject of a primary scheduled to take place on May 17, 2022, for which nomination petitions cannot be circulated until nearly 8 months from now.

9. The Petitioners can speak only to their assessment of the likelihood or probability of the General Assembly and Governor reaching agreement on the implementation of a congressional redistricting plan.

10. And Petitioners speculate regarding which congressional districts have been most affected by the population shifts when the official data will not be released for months.

11. Accordingly, the Petitioners have not alleged the direct and immediate interest in this litigation necessary to establish standing to assert their claims.

WHEREFORE, the Voter Respondents respectfully request that this Court sustain the Preliminary Objections to the Petition for Review and dismiss the Petition for Review with prejudice.

B. Petitioners' Claims Are Not Ripe and Thus Not Justiciable, Pa. R.C.P. 1028(a)(4)

12. Voter Respondents hereby incorporate all foregoing paragraphs as if they were fully set forth herein.

13. This action must be dismissed because Petitioners' claims are not ripe.

14. The doctrine of ripeness "mandates the presence of an actual controversy." *Bayada Nurses, Inc. v. Dep't of Labor & Industry*, 8 A.3d 866, 874 (Pa. 2010).

15. "Standing and ripeness are distinct concepts insofar as ripeness also reflects the separate concern that relevant facts are not sufficiently developed to permit judicial resolution of the dispute." *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 917 (Pa. 2013).

16. "Parties may raise questions regarding standing, ripeness, and the political question doctrine by filing preliminary objections to a petition for review filed in the original jurisdiction of the Commonwealth Court." *Id.*

17. A claim is not ripe where it rests on speculation regarding future events. *See*, *e.g.*, *Disability Rights Pa.*, 2020 WL 2820467, 2020 Pa. LEXIS 2751; *id.* (Wecht, J., concurring); *Delisle*, 2020 WL 3053629, 2020 Pa. LEXIS 2970; *id.* (Wecht, J., concurring).

18. Petitioners 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 release of the Census." Pet. ¶ 30.

19. As a practical matter, a new congressional redistricting plan need not be implemented until the first day to circulate nomination petitions, February 15, 2022. *See* 28 P.S. § 2868; Pet. ¶ 31.

20. Because no provision of the U.S. or Pennsylvania Constitution nor any statute imposes an earlier deadline, Petitioners have no right to demand the passage of a new congressional redistricting plan before February 15, 2022.

21. To justify depriving the legislature of the full opportunity to devise a congressional map of its own, the Petitioners premise their claims on the divided control of the legislative and executive branches. Pet. ¶ 7.

22. They assume, citing just two prior instances where a new congressional redistricting plan was not timely implemented, that the parties are destined to be incapable of reaching a compromise here. Pet. ¶¶ 7–8. Of course, one of those examples cited by Petitioners was 2018, when the Pennsylvania Supreme Court

afforded the General Assembly just 18 days from the date of its order striking down the prior congressional district map to submit a remedial district plan to the Governor. *See League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018). And in the other example cited by the Petitioners (following the 1990 Census), no actions relating to the redistricting of Pennsylvania's seats were filed until January 1992, the first day for circulating nominating petitions. *See Mellow v. Mitchell*, 607 A.2d 204, 205 (Pa. 1992)

23. Petitioner's action is unripe for the additional reason that they premise their claims of population shifts reflected in two-year old estimates. *See*, *e.g.*, Pet. ¶¶ 24–27 (discussing the Census Bureau's 2019 American Community Survey).

24. Such estimates cannot be used by the General Assembly or Governor to establish equipopulous congressional districts, falling far short of the "one person, one vote" standard.

25. Indeed, all of Petitioners' requested relief seeks to address alleged injuries that might—but might not—occur. Petitioners do not allege any facts to establish that the Petitioners are likely to suffer a constitutional deprivation.

26. Petitioner's claims that the existing congressional districts are unconstitutionally malapportioned ***now*** are simply erroneous. Pennsylvania's 18 existing congressional districts may properly remain as constituted until the 118th Congress meets January 3, 2023, more than 18 months from now.

27. Although Petitioners may speculate regarding the possibility of political gridlock and unequal congressional districts in 2022, such does not give rise to a cognizable cause of action. *Cf. Erfer v. Commonwealth*, 794 A.2d 325, 329 (Pa. 2002).

WHEREFORE, the Voter Respondents respectfully request that this Court sustain the Preliminary Objections to the Petition for Review and dismiss the Petition for Review with prejudice.

C. Petitioners Request Relief the Court Cannot Lawfully Grant, Pa. R.C.P. 1028(a)(4)

28. The Voter Respondents hereby incorporate all foregoing paragraphs as if they were fully set forth herein.

29. Petitioners asks this Court to rewrite the Election Code, imposing deadlines the General Assembly never saw fit to create. Petitioners suggest that the absence of a yet-unspecified deadline for the passage of a congressional redistricting plan somehow "infringes on Petitioners' right to association." Pet. ¶ 51.

30. Petitioners' request for relief would have the Court establish—for the first time in our Commonwealth's history—a deadline prior to the first day to circulate nominating petitions for the legislative and executive branches to create the new congressional districts.

31. The Court lacks the authority to grant this relief because the Pennsylvania General Assembly—not the judiciary—holds the sole power to write

the laws for the Commonwealth. *See In re: Fortieth Statewide Investigating Grand Jury*, No. 75, 77–82, 84, 86–87, 89 WM 2018, slip. op. at 12–13 (Pa. Dec. 3, 2018); *see also* U.S. CONST. art. I, § 4 (granting the Legislatures of each state the power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives"); PA. CONST. art. II § 1 (vesting the General Assembly with the legislative power).

32. "The power to regulate elections is a legislative one, and has been exercised by the General Assembly since the foundation of the government." *Winston v. Moore*, 91 A. 520, 522 (Pa. 1914) (citing *Patterson v. Barlow*, 60 Pa. 54 (1869); *see also Agre v. Wolf*, 284 F. Supp. 3d 591 (E.D. Pa. 2018) (Smith, C.J., mem.) ("The process for crafting procedural regulations is textually committed to state legislatures and to Congress.").

33. The Court cannot take unilateral action to rewrite the law—or rather, as Petitioners request, write the law for the first time—as that would overstep the bounds of its authority. *Robinson Twp. v. Commonwealth*, 147 A.3d 536, 583 (Pa. 2016); *Cali v. Philadelphia*, 177 A.2d 824, 835 (Pa. 1962). "[E]diting a statute" by the Court "would amount to judicial legislation." *State Bd. of Chiropractic Exam'rs v. Life Fellowship of Pa.*, 272 A.2d 478, 482 (Pa. 1971). For the Court to assume "the power to write legislation would upset the delicate balance in our tripartite

system of government." *Pap's A.M. v. City of Erie*, 719 A.2d 273, 281 (Pa. 1998), *rev'd on other grounds*, 529 U.S. 277 (2000).

34. By pressing this constitutional challenge, Petitioners are asking the Court to weigh in on the political policy judgments regarding the regulation of elections.

35. Moreover, this Court's "role is distinctly *not* to second-guess the policy choices of the General Assembly." *Ins. Fed. of Pa., Inc.*, 970 A.2d at 1122 n.15. (emphasis in original). Indeed, "[i]t is only when a given policy is so obviously for or against the public health, safety, morals or welfare that there is a virtual unanimity of opinion in regard to it, that a court may constitute itself the voice of the community in so declaring." *Mamlin v. Genoe*, 17 A.2d 407, 409 (Pa. 1941). And "[i]f, in the domain of economic and social controversies, a court were, under the guise of the application of the doctrine of public policy, in effect to enact provisions which it might consider expedient and desirable, such action would be nothing short of judicial legislation[.]" *Id.*

36. Although the Court has the power to review the constitutionality of various provisions of the Election Code, it cannot direct the Legislature *how* to fix any alleged constitutional defect.

37. The drastic relief requested by the Petitioners would have the Court exceed its constitutional authority and strip the legislative and executive branches of

their full opportunity to pass a congressional redistricting plan, while at the same time diminishing the rights of the voters of this Commonwealth, including the Voter Respondents, who elected such officials to fulfill their constitutional mandate to implement a new congressional map.

WHEREFORE, the Voter Respondents respectfully request that this Court sustain the Preliminary Objections to the Petition for Review and dismiss the Petition for Review with prejudice.

D. Petitioners' Seek Attorney Fees They Are Not Permitted to Recover, Pa. R.C.P. 1028(a)(4)

38. The Voter Respondents hereby incorporate all foregoing paragraphs as if they were fully set forth herein.

39. Not only do the Petitioners ask the Court to exercise powers it lacks to remedy an alleged harm that may never come to fruition, but Petitioners request that the taxpayers fund this boondoggle, seeking an award of attorney fees. *See* Pet. Prayer for Relief ¶ e.

40. Pennsylvania courts have "consistently followed the general, American rule that there can be no recovery of attorneys' fees from an adverse party, absent an express statutory authorization, a clear agreement by the parties or some other established exception." *Merlino v. Delaware County*, 728 A.2d 949, 951 (Pa. 1999); *accord* 42 Pa.C.S. § 1726 ("Attorney's fees are not an item of taxable costs except to the extent authorized by section 2503"); 42 Pa.C.S. § 2503(10) (providing that "a

litigant is entitled to attorneys' fees as part of the taxable costs, only in circumstances specified by statute heretofore or hereafter enacted").

41. Petitioners cite no authority for the recovery of attorney's fees and cannot be awarded the same regardless of the outcome of this litigation.

WHEREFORE, the Voter Respondents respectfully request that this Court sustain the Preliminary Objections to the Petition for Review and dismiss the Petition for Review with prejudice.

III. CONCLUSION

WHEREFORE, the Voter Respondents respectfully request that this Court sustain the Preliminary Objections to the Petition for Review and dismiss the Petition for Review with prejudice.

Respectfully submitted,

GALLAGHER GIANCOLA LLC

Dated: June 18, 2021

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher
PA #37950
kag@glawfirm.com
Russell D. Giancola
PA #200058
rdg@glawfirm.com

3100 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
412.717.1900 (Phone)
412.717.1901 (Fax)

Counsel for Intervenor-Respondents Haroon Bashir, Vallerie Biancaniello, Debra A. Biro, Tegwyn Hughes, James D. Bee, Richard L. Lawson, David Dillon, Rico Timothy Elmore, Barbara Steinour, James Curtis Jarrett, Jeffrey Wenk, and Donald W. Beishl, Jr.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER, *et al.*, Petitioners, v. VERONICA DEGRAFFENREID, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania, *et al.*, Respondents, v. HAROON BASHIR, VALLERIE BIANCANIELLO, DEBRA BIRO, TEGWYN HUGHES, JAMES BEE, RICHARD LAWSON, DAVID DILLON, RICO TIMOTHY ELMORE, BARBARA STEINOUR, JAMES CURTIS JARRETT, JEFFREY WENK, and DONALD BEISHL, JR., Intervenor-Respondents.	No. 132 MD 2021

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2021, upon consideration of the Preliminary Objections filed by the Voter Respondents, and any opposition

thereto, it is hereby ORDERED that said preliminary objections are SUSTAINED and Petitioners' Petition for Review is DISMISSED WITH PREJUDICE.

BY THE COURT:

_____, J.

VERIFICATION

The undersigned, avers that the statements of fact contained in the attached Application for Leave to Intervene by Voters of the Commonwealth of Pennsylvania are true and correct to the best of his knowledge and belief, and are made subject to the penalties of 18 Pa. Cons. Ann. Section 4904 relating to unsworn falsification to authorities.

Date: June 17, 2021

By: _____
Haroon Bashir

VERIFICATION

The undersigned, avers that the statements of fact contained in the attached Application for Leave to Intervene by Voters of the Commonwealth of Pennsylvania are true and correct to the best of his knowledge and belief, and are made subject to the penalties of 18 Pa. Cons. Ann. Section 4904 relating to unsworn falsification to authorities.

Date: June 17, 2021

By: _____
James D. Bee

VERIFICATION

The undersigned, avers that the statements of fact contained in the attached Application for Leave to Intervene by Voters of the Commonwealth of Pennsylvania are true and correct to the best of his knowledge and belief, and are made subject to the penalties of 18 Pa. Cons. Ann. Section 4904 relating to unsworn falsification to authorities.

Date: June 17, 2021

By: _____
Debra A. Biro

VERIFICATION

The undersigned, avers that the statements of fact contained in the attached Application for Leave to Intervene by Voters of the Commonwealth of Pennsylvania are true and correct to the best of his knowledge and belief, and are made subject to the penalties of 18 Pa. Cons. Ann. Section 4904 relating to unsworn falsification to authorities.

Date: June 17, 2021

By: _____
James Curtis Jarrett

VERIFICATION

The undersigned, avers that the statements of fact contained in the attached Application for Leave to Intervene by Voters of the Commonwealth of Pennsylvania are true and correct to the best of his knowledge and belief, and are made subject to the penalties of 18 Pa. Cons. Ann. Section 4904 relating to unsworn falsification to authorities.

Date: June 17, 2021

By: Rico Timothy Elmore
Rico Timothy Elmore

VERIFICATION

The undersigned, avers that the statements of fact contained in the attached Application for Leave to Intervene by Voters of the Commonwealth of Pennsylvania are true and correct to the best of his knowledge and belief, and are made subject to the penalties of 18 Pa. Cons. Ann. Section 4904 relating to unsworn falsification to authorities.

Date: June 17, 2021

By: _____
Jeffrey Wenk

VERIFICATION

The undersigned, avers that the statements of fact contained in the attached Application for Leave to Intervene by Voters of the Commonwealth of Pennsylvania are true and correct to the best of his knowledge and belief, and are made subject to the penalties of 18 Pa. Cons. Ann. Section 4904 relating to unsworn falsification to authorities.

Date: June 17, 2021

By: _____
Valerie Biancamello

VERIFICATION

The undersigned, avers that the statements of fact contained in the attached Application for Leave to Intervene by Voters of the Commonwealth of Pennsylvania are true and correct to the best of his knowledge and belief, and are made subject to the penalties of 18 Pa. Cons. Ann. Section 4904 relating to unsworn falsification to authorities.

Date: June 17, 2021

By: _____
David J. Dillon

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.

Dated: June 18, 2021

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher
PA #37950
Russell D. Giancola
Pa. #200058
GALLAGHER GIANCOLA LLC
436 Seventh Avenue, 31st Floor
Pittsburgh, PA 15219
412.717.1900

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2021 I caused a true and correct copy of the forgoing **APPLICATION FOR LEAVE TO INTERVENE BY VOTERS OF THE COMMONWEALTH OF PENNSYLVANIA,** to be filed via the Court's PAC File system, which will serve below identified counsel:

Edward D. Rogers, Esq.
Marcel S. Pratt, Esq.
Robert J. Clark, Esq.
Michael R. McDonald, Esq.
Paul K. Ort, Esq.
Ballard Spahr LLP
1735 Market Street, Floor 51
Philadelphia, PA 19103
(Counsel for Petitioners)

Aria C. Branch, Esq.
Perkins Coie LLP
700 Thirteenth Street NW, Suite 800
Washington, DC 20005-3960
(Counsel for Petitioners)

Abha Khanna, Esq.
Perkins Coie LLP
1201 Third Avenue, Suite 3900
Seattle, WA 98101-3099
(Counsel for Petitioners)

Kathleen M. Kotula, Esq.
Pennsylvania Department of State
401 North Street
306 North Office Building
Harrisburg, PA 17120-0500
(Counsel for Respondents)

Kenneth L. Joel, Esq.

Pennsylvania Governor's Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101
(Counsel for Respondents)

Anthony R. Holtzman, Esq.
K&L Gates LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
(Counsel for Proposed-Intervenors Jake Corman, President pro tempore of the Pennsylvania Senate, and Kim Ward, Majority Leader of the Pennsylvania Senate)

Jeffry Duffy, Esq.
BakerHostetler LLP
Cira Centre, 12th Floor
2929 Arch Street
Philadelphia, PA 19104
(Counsel for Proposed-Intervenors Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives)

Patrick T. Lewis, Esq.
BakerHostetler LLP
127 Public Square, Suite 2000
Cleveland, OH 44114
(Counsel for Proposed-Intervenors Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives)

Robert J. Tucker, Esq.
BakerHostetler LLP
200 Civic Center Drive, Suite 1200
Columbus, OH 43215
(Counsel for Proposed-Intervenors Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives)

Thomas W. King, Esq.
Thomas E. Breth, Esq.
Jordan P. Shuber, Esq.

Dillon, McCandless, King, Coulter & Graham LLP
128 West Cunningham Street
Butler, PA 16001
(Counsel for Proposed Intervenors)

Jason B. Torchinsky, Esq.
Jonathan P. Lienhard, Esq.
Shawn T. Sheehy, Esq.
Holtzman Vogel Baran Torchinsky Josefiak PLLC
15405 John Marshall Highway
Haymarket, VA 20169
(Counsel for Proposed Intervenors)

Dated: June 18, 2021

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher
PA #37950
Russell D. Giancola
Pa. #200058
GALLAGHER GIANCOLA LLC
436 Seventh Avenue, 31st Floor
Pittsburgh, PA 15219
412.717.1900

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER, *et al.*, Petitioners, v. VERONICA DEGRAFFENREID, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania, *et al.*, Respondents.	No. 132 MD 2021

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2021, upon consideration of the Application for Leave to Intervene filed by the Proposed Voter Intervenors, and any opposition thereto, it is hereby ORDERED that said application is GRANTED. The Proposed Voter Intervenors are granted leave to intervene as Respondents. The Preliminary Objections attached as Exhibit A to the application are deemed filed effective the date of this Order.

BY THE COURT:

_____, J.

Exhibit 2

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
	:	Held: August 24, 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 MICHAEL H. WOJCIK, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

Filed: September 2, 2021

Petitioners[1] filed a petition for review (Petition) addressed to this Court's original jurisdiction. The Petition seeks, among other things, a declaration

[1] Petitioners are Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael

that the Commonwealth of Pennsylvania's 2018 congressional district map is unconstitutional and may not be used for the 2022 election year. Currently, the Court considers three applications for leave to intervene. 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, Legislators) filed the first application for leave to intervene. The Republican Party of Pennsylvania and Individual Republican Voters[2] (collectively, Republican Party) filed the second application for leave to intervene, and Voters of the Commonwealth of Pennsylvania (Voters of Commonwealth)[3] filed the third

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Guttman, Maya Fonkeu; Brady Hill; Mary Ellen Balchunis, Tom DeWall, Stephanie McNulty, and Janet Temin. Each named petitioner is a United States citizen and registered voter in Pennsylvania and intends to advocate and vote for Democratic candidates. *Id.*

[2] The application for leave to intervene identifies the following individuals as proposed intervenors: Patricia K. Poprik, David Torres, Billy Lanzilotti, Nancy Becker, Michael D. Straw, James Depp, Joseph P. Vichot, Justin Behrens, Thomas Whitehead, Lee Becker, Louis Capozzi, Kirk Radanovic, Paul Nyman, James McGuire, Jr., Kristine L. Eng, Donna Cosmello, James Foreman, David Ball, James Vasilko, Lynne Ryan, Cynthia Kirk, Daryl Metcalfe, Luke Negron, Sue Ann Means, Reverend Todd Johnson, Michael Harvey, and Louisa Gaughen. *See* Appl. for Leave to Intervene by Proposed Intervenors the Republican Party of Pennsylvania and Individual Republican Voters, ¶¶ 2-28. The application provides each proposed intervenor's congressional district number; any position within the Republican Party that he or she may hold or has held in the past; where applicable, an indication of whether the individual is considering running for public office; and the individual's participation in the election process whether it be volunteering/advocating for a Republican candidate or intent to vote for Republican candidates.

[3] "Voters of the Commonwealth of Pennsylvania" is not an organization but rather is used to generally refer to the named proposed intervenors in the application. The application is brought on behalf of Haroon Bashir, Vallerie Biancaniello, Debra A. Biro, Tegwyn Hughes, James D. Bee, Richard L. Lawson, David Dillon, Rico Timothy Elmore, Barbara Steinour, James Curtis Jarrett, Jeffrey Wenk, and Donald Beishl, Jr. *See* Appl. for Leave to Intervene by Voters of the Commonwealth of Pennsylvania, ¶¶ 10-21. The application identifies the voter by name, general area of residency and congressional district number, as well as the individual's intention in voting in the 2022 elections. *Id.* Each allegation also indicates that the proposed intervenor voted for his/her General Assembly representatives with the expectation that the representatives would have the authority to enact a new congressional district map based on the 2020 Census data.

application. All proposed intervenors seek to be aligned with Respondents Veronica Degraffenreid, Acting Secretary of the Commonwealth of Pennsylvania, and Jessica Mathis, Director for the Pennsylvania Bureau of Election Services and Notaries (collectively, Secretary). Petitioners oppose all three applications, while the Secretary opposes only the applications of the Republican Party and Voters of Commonwealth. After hearing held August 24, 2021 and argument on the issue, we grant Legislators' application but deny the applications of the Republican Party and Voters of Commonwealth based on our conclusion that they lack a legally enforceable interest in the Petition and that they could not be named as original parties to the action.

I. Petition for Review

The Petition provides details regarding the results of the 2020 Census, the dates by which the United States (U.S.) Secretary of Commerce must provide the President of the United States 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 House of Representatives, one 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 House of Representatives.

Petitioners claim that the Commonwealth's current congressional districts are malapportioned due to shifts in population within the Commonwealth.

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.

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 date on which candidates may begin collecting signatures for placement on the primary election ballot.

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), 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.

Petitioners allege that the current congressional district map violates: (1) article I, section 5 of the Pennsylvania Constitution (free and equal elections

clause);[4] (2) 2 U.S.C. §2c (relating to districting for House of Representatives);[5] (3) article I, section 20 of the Pennsylvania Constitution (relating to right to petition);[6] and (4) Article I, Section 2 of the U.S. Constitution (relating to qualifications for member of the House of Representatives).[7] Petitioners seek a declaration that the

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[4] Article I, section 5 of the Pennsylvania Constitution, PA. CONST. art. I, § 5, 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."

[5] 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 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).

[6] Article I, section 20 of the Pennsylvania Constitution, PA. CONST. art. I, § 20, 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."

[7] Article I, Section 2 of the U.S. Constitution, U.S. CONST. art. I, § 2, 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

Commonwealth's current congressional district map violates the above constitutional provisions; an injunction enjoining the Secretary, her agents, officers, employees, and successors from implementing, enforcing, or giving effect to the 2018 congressional district map; establishment of a schedule that will enable the Court to adopt and implement a new congressional district map by a date certain should the political branches fail to enact such a map by that time; implementation of a new congressional district map that complies with the U.S. and Pennsylvania Constitutions in the event that the political branches do not enact a new map by a date certain; an award of attorneys' fees, costs, and disbursements; and an award of any other relief the Court deems just and proper.

II. Applications for Leave to Intervene

A. Standards for Intervention

Although this matter was filed in the Court's original jurisdiction, the right to intervene is governed by Pennsylvania Rules of Civil Procedure Nos. 2326-

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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, 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.

2350. Rule No. 2327, titled "Who May Intervene," provides in relevant part and as asserted by the proposed intervenors:

> At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if
>
> . . . .
>
> (3) such person could have joined as an original party in the action or could have been joined therein; or
>
> (4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa. R.C.P. No. 2327.[8]

Rule No. 2329, titled "Action of Court on Petition," declares:

> Upon the filing of the petition and after hearing, of which due notice shall be given to all parties, the court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention; but an application for intervention may be refused, if
>
> (1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or
>
> (2) the interest of the petitioner is already adequately represented; or

[8] Pursuant to Pennsylvania Rule of Civil Procedure No. 2328(a), the proposed intervenors attached to their respective applications for leave to intervene copies of the pleading that they would file if permitted to intervene. Each group of proposed intervenors would file preliminary objections to the Petition. Pa. R.C.P. No. 2328(a).

> (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

Pa. R.C.P. No. 2329.

The determination of whether a proposed intervenor has a "legally enforceable interest" calls for "a careful exercise of discretion and consideration of all the circumstances involved," *Realen Valley Forge Greenes Associates v. Upper Merion Township Zoning Hearing Board*, 941 A.2d 739, 744 (Pa. Cmwlth. 2008) (citations omitted), because the exact boundaries of the "legally enforceable interest" limitation in Rule No. 2327(4) are not clear. *Id.* Nevertheless, an applicant for intervention must have some right, either legal or equitable, that will be affected by the proceedings. *See generally Keener v. Zoning Hearing Board of Millcreek Township*, 714 A.2d 1120, 1122 (Pa. Cmwlth. 1998).

At this point, it is important to note that although we summarize the applications for leave to intervene, the Court has considered the entirety of the applications and supporting briefs, the caw law cited therein, the replies to Petitioners' and the Secretary's opposition to the intervention applications, and the arguments, testimony and exhibits presented at the August 24, 2021 hearing in our determination of whether to grant intervention in this case.

B. Legislators' Application

Legislators' application for leave to intervene asserts that the named legislators are the highest-ranking members of their respective chambers, that the Republican Caucuses of their chambers have authorized them to seek intervention, and that the U.S. Constitution empowers the General Assembly to establish the time, place, and manner of elections to Congress, which includes the authority to redistrict.

See U.S. CONST. art. I, § 4 (stating that the time, place and manner of elections are left to the states' legislatures). Legislators seek to intervene pursuant to Pa. R.C.P. No. 2327(3) and (4) to vindicate their authority to redistrict the Commonwealth.

Legislators' memorandum in support of their application expands upon the reasons why they should be permitted to intervene. They first claim that they could have been named as original parties to the action or could have been joined therein because they have a special interest in the action.[9] That special interest is Petitioners' alleged desire to divest Legislators of their constitutional authority to conduct congressional redistricting. Legislators also claim that their participation is required by the Declaratory Judgments Act,[10] which mandates that all persons who have or claim any interest that would be affected by a declaration be made parties to the action, and that absent their participation, no declaration may prejudice their rights. 42 Pa. C.S. § 7540(a). Legislators also claim a legally enforceable interest in defending their constitutional authority to prescribe the time, place, and manner of holding elections, which includes the authority to enact congressional district maps. *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787, 808 (2015) ("redistricting is a legislative function, to be performed in

[9] Legislators claim that they could have been joined as original parties because it is not uncommon for the courts to allow legislators to intervene in actions challenging the constitutionality of, or seeking to alter, redistricting plans. We reject such a blanket assertion. The cases upon which Legislators rely involved legislator participation *after* a redistricting plan was implemented and later challenged.

We also reject any reliance on *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1288 (Pa. Cmwlth. 2019), as supporting the right to intervene based on a special interest. *Sunoco* addressed standing to *initiate* formal complaints before the Pennsylvania Public Utility Commission and did not directly involve the issue of intervention in formal complaint proceedings. Regardless, the Commission's regulations provide the standards upon which intervention may be granted. There is no statutory or regulatory law addressing intervention in cases such as the one currently before the Court.

[10] 42 Pa. C.S. §§ 7531-7541.

accordance with the State's prescriptions for lawmaking . . ."). They claim that Petitioners asked the Court to take over this process even before the General Assembly has the necessary tools to redistrict and to impose unreasonable deadlines.

The law is well settled as to legislator standing when seeking to intervene. In *Markham v. Wolf*, 136 A.3d 134 (Pa. 2016), legislators sought to intervene in an action challenging an executive order that authorized direct care workers to organize. This Court denied the legislators' application for leave to intervene, which the Supreme Court affirmed. In doing so, the Supreme Court identified the requirements for legislator standing.

> Standing exists only when the legislator's direct and substantial interest in his or her ability to participate in the voting process is negatively impacted, *see* [*Wilt v. Beal*, 363 A.2d 876 (Pa. Cmwlth. 1976)], or when he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator, *see* [*Fumo v. City of Philadelphia*, 972 A.2d 487 [Pa. 2009),] (finding standing due to alleged usurpation of legislators' authority to vote on licensing).

Conversely, a legislator lacks standing

> where he or she has an indirect and less substantial interest in conduct outside the legislative forum which is unrelated to the voting or approval process, and akin to a general grievance about the correctness of governmental conduct, resulting in the standing requirements being unsatisfied.

Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services, 225 A.3d 902 (Pa. Cmwlth. 2020)[11] (quoting *Markham*, 136 A.3d at 145). The Supreme Court has held that

> members of the General Assembly have sufficient interest to participate in legal action in their official capacity and based upon their special status "where there [i]s a discernable and palpable infringement on their authority as legislators." A legislator's legal interest has been recognized "to protect [the] legislator's right to vote on legislation" and "in actions alleging a diminution or deprivation of the legislator's . . . power or authority." But, a legislator has no legal interest "in actions seeking redress for a general grievance about the correctness of government conduct."

Robinson Township v. Commonwealth, 84 A.3d 1054, 1054 (Pa. 2014) (alterations in original; citations omitted) (affirming Commonwealth Court order denying legislators intervention in action challenging constitutionality of amendments to the Oil and Gas Act[12]). The principles of legislator standing are therefore relevant to the issue of whether the putative intervenor has demonstrated the legally enforceable interest required of Pa. R.C.P. No. 2327(4).

We disagree with Petitioners' claims that Legislators lack a legally enforceable interest in this matter because the Petition does not seek to deprive Legislators of their authority to redistrict the congressional district map and that

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[11] The opinion appearing at 225 A.3d 902 (Pa. Cmwlth. 2020), addresses legislator standing. Thereafter, on March 26, 2021, the Court issued an order sustaining the respondents' preliminary objections and dismissing the petition for review. The petitioners filed an appeal to the Supreme Court, which remains pending. *See Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* (Pa. Cmwlth., No. 26 M.D. 2019, filed March 26, 2021), *appeal pending*, (Pa., No. 26 MAP 2021).

[12] 58 Pa. C.S. §§ 3201-3274.

Legislators are mischaracterizing the Petition as such. Among other things, the Petition seeks an order establishing a date certain by which the Court will take control of the redistricting process should the General Assembly and Governor fail to act. Pennsylvania law, however, does not establish a date by which a new congressional district map must be put in place. While Petitioners correctly cite *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), for the proposition that there is nothing in the law prohibiting the court from establishing a deadline for enactment of a new congressional map, it is noteworthy that the petitioners in *Mellow* were eight senators who sought nearly the same relief as that sought here, and several members of the state House of Representatives and Senate were permitted to intervene. When the Supreme Court exercised plenary jurisdiction in *Mellow* and appointed a judge of this Court as master to conduct hearings and report to the Supreme Court, Judge Craig directed that the parties, including intervenors, submit their proposed congressional district plans by a date certain.

At this juncture, it is not known how the redistricting process will proceed. But it seems clear that Legislators' ability to legislate would be impaired if the Court imposes a deadline on the General Assembly and the Governor to put in place a new congressional district map and takes control of the redistricting process. Likewise, Legislators would have a legally enforceable interest in the submission of a proposed plan for the Court's consideration if called upon to draw a new congressional district map, as in the *Mellow* case.

We therefore grant Legislators' application for leave to intervene. They have a legally enforceable interest because Pennsylvania law does not prescribe the date by which a new congressional district map must be put in place and because they, as members of the General Assembly, have the constitutional authority to

establish the time, place, and manner of elections, which includes the authority to redistrict. *Arizona State Legislature.* Any potential infringement of that right may diminish or deprive Legislators of their ability to act as legislators.

C. Republican Party's Application and Voters of Commonwealth's Application

We next consider the applications for leave to intervene filed by the Republican Party and Voters of Commonwealth. Both applications claim that the Republican Party, including the individual Party Voters, and Voters of Commonwealth could have been named as original parties. We disagree. Clearly, the Republican Party, the individual Republican Voters, and Voters of Commonwealth could not be joined as petitioners because they oppose Petitioners' requested relief. Similarly, they could not be joined as respondents because Petitioners' claims do not affect their liabilities. *See* Pa. R.C.P. No. 2229(b) ("A [petitioner] may join as [respondents] persons against whom the [petitioner] asserts any right to relief . . . in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact *affecting the liabilities of all such persons* will arise in the action.") (emphasis added).[13] This factor militates against granting the Republican Party's and Voters of Commonwealth's applications for leave to intervene.

[13] The Republican Party notes that the Court has permitted intervention in other cases, specifically *League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n.5 (Pa. 2018). There, the Supreme Court noted that a judge of this Court, acting as master, permitted certain Republican voters, who included announced or potential candidates for Congress and other active members of the Republican Party, to intervene. The Court did not state the basis upon which intervention was granted, and our review of this Court's docket in *League of Women Voters* (Pa. Cmwlth., No. 261 M.D. 2017), indicates that the Court's order did not set forth its reasons for granting intervention.

We now address whether the Voters of Commonwealth or the Republican Party has shown a legally enforceable interest. For its part, the Voters of Commonwealth claim that they seek to intervene to preserve the existing framework that the General Assembly and Governor have until the first day to circulate nomination petitions to implement a new congressional district map. They claim that they are "mirror images" of Petitioners because they intend to advocate on behalf of Republican candidates in 2022. Voters of Commonwealth suggest that if the Court grants Petitioners the relief requested, such relief would curtail the ability of the Republican-controlled General Assembly to represent their interests. This would diminish or nullify their votes and would take away local officials' constitutional duty to redistrict the Commonwealth. Local officials are more familiar with their constituents than Supreme Court jurists.

Voters of Commonwealth suggest that they have a special interest that allows them to intervene, that being that this matter may be of public interest. They allege an inalienable right to express and present their concerns regarding drawing of the congressional district map, and if this Court imposes a date certain by which the political branches must act or takes over the redistricting process, the General Assembly will be divested of its authority to draw the new map.[14] A court drawing

[14] The Court admitted Voters of Commonwealth Exhibit 1, which contains the Affidavits of Tegwyn Hughes, Debra A. Biro, James Curtis Jarrett, James D. Bee, and Jeffrey Wenk, subject to Petitioners' and the Secretary's objections to the legal conclusions stated within the affidavits. The Affidavits largely echo the averments in the application for leave to intervene and are uniform for the most part. The affiants attest to their residency, registration as qualified electors in the Commonwealth, regularity in voting, voting with the expectation that their representatives would engage in the redistricting process based on the 2020 Census and ability to contact their representatives, and their intention in contacting their representatives relating to the new congressional district map. Each affiant states that he/she has an interest in the contours of his/her congressional districts and an inalienable right to express to his/her representatives concerns regarding redistricting under the First Amendment, U.S. CONST. amend. I. Further, affiants state that the Secretary does not have authority regarding redistricting and therefore does not represent the affiants' interest.

the congressional district map will turn a legislative process into a judicial one, according to Voters of Commonwealth. Finally, newly enacted redistricting maps have been subject to voter challenges.

As for a legally enforceable interest, the Republican Party argues that it has an interest in expanding its power within the Commonwealth government and that redistricting is fundamentally about political power. It maintains that it has a legally enforceable interest in (1) the allocation of its resources, (2) advocating for its interest and that of its members in areas that are bipartisan, (3) who draws the new congressional district map, that being the Republican-controlled General

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They conclude that they have a substantial and particularized interest in preserving the existing framework that the General Assembly and the Governor have until the first day to circulate nomination petitions to implement a new district plan. Petitioners' requested relief would deprive them of their ability to contact their legislators regarding redistricting, thus nullifying their vote for a representative. Further, Petitioners' request that the Court invalidate the current congressional map would deprive affiants of their right to representation should a special election be needed in their district.

The Court also permitted Voters of Commonwealth to provide an additional exhibit after the proceedings, which Voters filed on August 26, 2021. Voters filed a supplemental affidavit in support of the Voters' application for leave to intervene by Vallerrie Biancaniello. The affidavit is the same as those presented in Voters of Commonwealth Exhibit 1. The Secretary promptly responded, indicating that she does not object to the affidavit on hearsay grounds or the Court's consideration of the affidavit in lieu of live testimony, but she does object to the legal conclusions stated therein. Petitioners object on the same basis as the Secretary.

Upon review, we sustain the objections to the legal conclusions stated within each affidavit, including that: (1) the affiant has a substantial and particularized interest in preserving the existing framework; (2) the requested relief would have the effect of preventing the affiant from being able to interact with the elected representatives regarding redistricting and nullifies the affiants' votes in the 2020 election; (3) if the Court grants the requested relief, the General Assembly will be deprived of its authority to draw new congressional districts and deprive the affiant of his/her ability to provide input to his/her representative thus infringing on the affiant's free speech rights; (4) the affiants' votes would be nullified and their interests of having their representatives exercise their full scope of constitutional duties with respect to redistricting would be infringed; and (5) the affiants could be deprived of their right to representation if the current map is declared unconstitutional and a special election must take place before a new map is enacted. In sustaining the objections to the Exhibits, we did not consider the stated conclusions in our disposition of this matter.

Assembly or the Justices of the Supreme Court, who are mostly Democrats, (4) a change in the environment in how rival parties defend their concrete interests, (5) recruiting of candidates, (6) risk of confusion to voters, and (7) associational interests.[15] *See* 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

[15] The Republican Party presented the testimony of Angela Alleman, Executive Director of the Pennsylvania GOP. Mrs. Alleman oversees all operations of the Party. She explained her concerns if the Supreme Court draws the congressional district map, including the removal of power to do so by the General Assembly, the Party's ability to work with its legislators to influence the map but inability to advocate before the Supreme Court, and the Party's diversion of funds to have experts prepare and analyze any map drawn by the Supreme Court. She believes that it is unfair to create a deadline for the General Assembly to act, especially when it is not clear when the 2020 Census data will be available. Mrs. Alleman stated that the uncertainty of the congressional district map affects candidate recruitment and makes it impossible for incumbents to know whether their districts will be realigned and the possibility that if realigned, whether the incumbent will be running against another incumbent. She acknowledged that regardless of who draws the new congressional district map, the Republican Party will have to spend money to educate voters, and for "get out and vote" campaigns. Mrs. Alleman agreed that Republican Party members may speak to their legislators regardless of who draws the map, and that the Republican Party has no power to make the General Assembly do what the Party wants. For Mrs. Alleman, the issue with the Petition is the request for a deadline by which the General Assembly and Governor must act and the allocation of the Party's resources depending on who draws the congressional district map. She believes that if the General Assembly draws the map, the Republican legislators will negotiate the best possible map for the Party. Expenses the Republican Party would incur if the Supreme Court draws the map include legal fees, including fees for intervening in this action, expert fees for analyzing and preparing maps, and the diversion of the Party's resources. The Court finds Mrs. Alleman's testimony credible but not persuasive on the issue of whether the Republican Party has a legally enforceable interest.

The Court admitted 12 affidavits of the individual Republican Party members: Nancy Becker, James Depp, Thomas Whitehead, Louis Capozzi, Kirk Radanovic, Kristine L. Eng, David Ball, James Vailko, Daryl Metcalfe, Sue Ann Means, and Michael Harvey, and Justin Behrens. The affidavits are substantially the same and attest that the affiant is a U.S. citizen and registered voter in Pennsylvania; the district in which the affiant resides; the affiant's participation in the election-related/Republican Party activities; the affiant is a long-time supporter of the Republican party; and that Petitioners' and the Secretary are affiliated with the affiant's political opponents, and that, therefore, they will not advocate for a congressional district map that represents the affiant's interest as a supporter and/or official of the Republican Party. The affidavits also attest to the affiant's resources invested in advocating on behalf of the Republican Party, including activities that may be affected by the Supreme Court's drawing of the congressional district map.

with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.").

First, the Court rejects the Voters of Commonwealth and the Republican Party's argument that because they have a special interest in the matter, they are permitted to intervene. Both proposed intervenors rely on *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Cmwlth. 2019), but in that case, the primary issue was whether a senator had standing, either as a legislator or as a private citizen, to initiate a formal complaint with the Pennsylvania Public Utility Commission; the question of intervention was not at issue in *Sunoco*. The brief discussion of intervention was limited to distinguishing between standing to initiate a formal complaint and standing to intervene, which the Commission's regulations expressly address. Years ago, in *Application of Biester*, 409 A.2d 848 (Pa. 1979), our Supreme Court established the standards for intervention. In *Biester*, a taxpayer sought to intervene in an action seeking to impanel a statewide investigative grand jury. The Court, after initially allowing the taxpayer to intervene, later vacated its order granting intervention. The Court determined that to intervene, the taxpayer must meet the "substantial, direct, and immediate" test set forth in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). That standard remains the law in this Commonwealth. *Markham,* 136 A.3d at 139 ("in order to intervene, individuals must have standing, Pa. R.C.P. [No.] 2327(3), (4), and to establish standing, one must have an interest that is substantial, direct[,] and immediate"). To have a substantial interest, the proposed intervenor's concern in the outcome of the action must surpass "the common interest of all citizens in procuring obedience to the law." *Markham*, 136 A.3d at 140. An interest is direct if the matter will cause

harm to the party's interest, and the concern is immediate "if that causal connection is not remote or speculative." *Id.*

We conclude that the Voters of Commonwealth and individual Republican Voters fail to meet the "substantial, direct, and immediate" test. Neither the individual Republican Voters, regardless of political interest, or Voters of Commonwealth have an interest that surpasses the interest of all qualified and registered voters in the Commonwealth. Based on the preliminary 2020 Census data, the Commonwealth will lose a seat in the U.S. House of Representatives and thus our current congressional district map must be redrawn. As counsel for Voters of Commonwealth stated, the current congressional district map is malapportioned across the state. *Every elector*, therefore, has an interest in redrawing a congressional district map that meets constitutional standards. Thus, the individual Republican Voters and Voters of Commonwealth do not have a substantial interest that surpasses the common interest of all citizens. [16]

The Republican Party, identified as non-profit organization, has no legally enforceable interest either. Based on our review, it appears that the Republican Party is complaining about what role it may play in the redistricting process, a role that is not protected by law. Redistricting, however, is fundamentally about protecting the one-person one-vote principle, that is, all votes have equal power as near as possible. *See Gray v. Sanders*, 372 U.S. 368, 381 (1963); *Holt v. 2011 Legislative Reapportionment Commission*, 38 A.3d 711, 739 (Pa. 2012). The

[16] We further disagree that Voters of Commonwealth are the "mirror image" of Petitioners because they will advocate for Republican candidates in 2022, whereas, Petitioners allege, they will advocate for Democratic candidates. Petitioners allege that the congressional districts in which they live are overpopulated as evidenced by the 2020 Census and, thus, their voting power is diluted. *See* Voters of Commonwealth, Appl. for Leave to Intervene, ¶¶ 10-21. Voters of Commonwealth do not speculate how their congressional districts may be affected by redistricting.

activities of the Republican Party, and how the Party allocates its resources, do not constitute a legally enforceable interest in how the congressional district map is determined and by whom. The case law cited by the Republican Party does not stand for the proposition that the asserted interests constitute legally enforceable interests sufficient to confer standing to intervene. The case law cited by the Secretary, rather, suggests otherwise and is more persuasive. *Cf. Gill v. Whitford*, 138 S. Ct. 1916, 1932 (2018) (recognizing that under the U.S. Supreme Court's precedent, achieving a party majority in the legislature is a collective political interest, not an individual legal interest recognized by law); *see also Pennsylvania Voters Alliance v. Centre County*, 496 F. Supp. 3d 861, 868 (M.D. Pa. 2020) (recognizing that "'statewide harm' to a voter's interest in 'collective representation in the legislature'" or "in 'influencing the legislature's overall composition and policymaking'" is insufficient to support standing under Article III of the U.S. Constitution, U.S. CONST. art. III; "[t]o the extent that the latter interest is recognized, it is 'embodied in [an individual's] right to vote for [his or her] representative'") (quoting *Gill*, 138 S. Ct. at 1931); *Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002) (recognizing that Democratic committee lacked standing to challenge reapportionment plan because it was not an entity authorized to exercise the right to vote), *abrogated on other grounds by League of Women Voters*, 178 A.3d 737.

Moreover, we conclude that the Republican Party's, individual Republican Voters,' and Voters of Commonwealth's claimed interests are speculative and not immediate. The U.S. Census Bureau has released the redistricting data to the states, with the final redistricting data toolkit to be delivered by September 30, 2021. *See* https:www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census results.html (last visited August 30, 2021).

Therefore, our General Assembly can begin the process of moving forward with a new congressional district plan based on the Census data received. There is nothing preventing the Voters of Commonwealth, the individual Republican Voters, and the Republican Party from exercising their First Amendment and associational rights to make their positions known to their respective legislators.

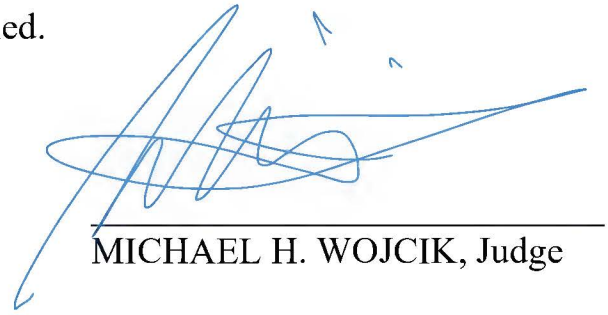
Because we conclude that the Republican Party, the individual Republican Voters, and Voters of Commonwealth have failed to show that they have legally enforceable interests in these proceedings, we deny their applications for leave to intervene.

III. Conclusion

The General Assembly and the Governor are vested with authority to draw a new congressional district map. Pennsylvania law, however, does not provide a date by which they must act. The relief that Petitioners seek, the setting of a deadline by which the political branches must act, or taking control of the redistricting process, potentially infringes upon that authority. Accordingly, Legislators have shown a legally enforceable interest entitling them to intervene in this matter. *Markham; Allegheny Reproductive Health Center*; Pa. R.C.P. No. 2327(4).

Conversely, the Republican Party and Voters of Commonwealth have failed to demonstrate that they could be joined as original parties to the action or that they have a legally enforceable interest that would entitle them to intervene in this matter. Pa. R.C.P. No. 2327(3), (4).

Accordingly, the application for leave to intervene filed by Legislators is granted, and the applications for leave to intervene filed by the Republican Party and Voters of Commonwealth are denied.



MICHAEL H. WOJCIK, Judge

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

NOW 2nd day of September, 2021, upon consideration of the Applications for Leave to Intervene filed on behalf of (1) 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, Legislators); (2) the Republican Party of Pennsylvania and Individual Republican Voters (collectively, Republican Party); and (3) Voters of the

Commonwealth of Pennsylvania (Voters of Commonwealth), and after hearing and argument on the issue, it is hereby ordered as follows.

Legislators' Application for Leave to Intervene is **GRANTED**. The Prothonotary shall accept for filing Legislators' Preliminary Objections to the Petition for Review, attached to Legislators' June 1, 2021 Application for Leave to Intervene.

Respondents[1] shall file and serve their brief in support of their preliminary objections (4 copies) within 14 days of the exit date of this order.

Legislators shall file and serve their brief in support of their preliminary objections (4 copies) within 14 days of the exit date of this order. Petitioners shall file and serve their brief in opposition to Legislators' preliminary objections within 14 days of service of Legislators' brief. Upon completion of the briefing schedule, the Prothonotary shall list the preliminary objections on the appropriate argument list.

The Applications for Leave to Intervene filed by the Republican Party and the Voters of the Commonwealth are **DENIED**. The Republican Party's Application for Extraordinary Relief, attached to its Application for Leave to Intervene, is **DISMISSED AS MOOT**.

[1] Although Respondents filed preliminary objections, it appears that they have not filed their brief in support thereof. Petitioners, however, filed their brief in opposition to Respondents' preliminary objections on August 2, 2021.

Voters of the Commonwealth Exhibits 1 and 2 are admitted to the record. Petitioners' and Respondents' objections to the legal conclusions in the Voters of the Commonwealth's Exhibit 1 and Exhibit 2 are **SUSTAINED**.

MICHAEL H. WOJCIK, Judge

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464 MD 2021 and additional consolidated case(s)

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	:	464 MD 2021
	:	465 MD 2021
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		

PROOF OF SERVICE

I hereby certify that this 4th day of January, 2022, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Service

Served:	Devin Michael Misour
Service Method:	eService
Email:	dmisour@reedsmith.com
Service Date:	1/4/2022
Address:	Reed Smith LLP 225 Fifth Avenue Pittsburgh, PA 15222
Phone:	412--28-8-3091
Representing:	Petitioner Amy Myers Petitioner Amy Myers Petitioner David P. Marsh Petitioner David P. Marsh Petitioner Eugene Boman Petitioner Eugene Boman Petitioner Garth Isaak Petitioner Garth Isaak Petitioner Gary Gordon Petitioner Gary Gordon Petitioner James L. Rosenberger Petitioner James L. Rosenberger Petitioner Kristopher R. Tapp Petitioner Kristopher R. Tapp Petitioner Liz McMahon Petitioner Liz McMahon Petitioner Pamela Gorkin Petitioner Pamela Gorkin Petitioner Philip T. Gressman Petitioner Philip T. Gressman Petitioner Ron Y. Donagi Petitioner Ron Y. Donagi Petitioner Timothy G. Feeman Petitioner Timothy G. Feeman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	John Brent Hill
Service Method:	eService
Email:	jbh@hangley.com
Service Date:	1/4/2022
Address:	One Logan Square 27th Floor Philadelphia, PA 19103
Phone:	215--56-8-6200
Representing:	Respondent Degraffenreid, Veronica Respondent Jessica Mathis Respondent Jessica Mathis Respondent Veronica Degraffenreid

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Kim M. Watterson
Service Method:	eService
Email:	kwatterson@reedsmith.com
Service Date:	1/4/2022
Address:	225 Fifth Avenue Pittsburgh, PA 15222
Phone:	412--28-8-7996
Representing:	Petitioner Amy Myers Petitioner Amy Myers Petitioner David P. Marsh Petitioner David P. Marsh Petitioner Eugene Boman Petitioner Eugene Boman Petitioner Garth Isaak Petitioner Garth Isaak Petitioner Gary Gordon Petitioner Gary Gordon Petitioner James L. Rosenberger Petitioner James L. Rosenberger Petitioner Kristopher R. Tapp Petitioner Kristopher R. Tapp Petitioner Liz McMahon Petitioner Liz McMahon Petitioner Pamela Gorkin Petitioner Pamela Gorkin Petitioner Philip T. Gressman Petitioner Philip T. Gressman Petitioner Ron Y. Donagi Petitioner Ron Y. Donagi Petitioner Timothy G. Feeman Petitioner Timothy G. Feeman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Robert Andrew Wiygul
Service Method:	eService
Email:	rwiygul@hangley.com
Service Date:	1/4/2022
Address:	Hangley Aronchick Segal Pudlin & Schiller One Logan Square, 27th Floor Philadelphia, PA 19103
Phone:	215--49-6-7042
Representing:	Respondent Degraffenreid, Veronica Respondent Jessica Mathis Respondent Jessica Mathis Possible Intervenor Tom Wolf Possible Intervenor Tom Wolf Respondent Veronica Degraffenreid

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Shannon Elise McClure
Service Method:	eService
Email:	smcclure@reedsmith.com
Service Date:	1/4/2022
Address:	1717 Arch Street Suite 3100 Philadelphia, PA 19103
Phone:	215-241-7977
Representing:	Petitioner Amy Myers Petitioner Amy Myers Petitioner David P. Marsh Petitioner David P. Marsh Petitioner Eugene Boman Petitioner Eugene Boman Petitioner Garth Isaak Petitioner Garth Isaak Petitioner Gary Gordon Petitioner Gary Gordon Petitioner James L. Rosenberger Petitioner James L. Rosenberger Petitioner Kristopher R. Tapp Petitioner Kristopher R. Tapp Petitioner Liz McMahon Petitioner Liz McMahon Petitioner Pamela Gorkin Petitioner Pamela Gorkin Petitioner Philip T. Gressman Petitioner Philip T. Gressman Petitioner Ron Y. Donagi Petitioner Ron Y. Donagi Petitioner Timothy G. Feeman Petitioner Timothy G. Feeman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

Served:	Anthony Richard Holtzman
Service Method:	eService
Email:	anthony.holtzman@klgates.com
Service Date:	1/4/2022
Address:	K&L Gates LLP 17 N. Second Street, 18th Floor Harrisburg, PA 17101
Phone:	717--23-1-4500
Representing:	Possible Intervenor Jake Corman Possible Intervenor Jake Corman Possible Intervenor Kim Ward Possible Intervenor Kim Ward

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Benjamin David Geffen
Service Method:	eService
Email:	bgeffen@pilcop.org
Service Date:	1/4/2022
Address:	1709 Benjamin Franklin Parkway, 2nd Floor Philadelphia, PA 19103
Phone:	215--62-7-7100
Representing:	Possible Intervenor Barbara Hill
	Possible Intervenor Barbara Hill
	Possible Intervenor Cynthia Alvarado
	Possible Intervenor Cynthia Alvarado
	Possible Intervenor Jodi Greene
	Possible Intervenor Jodi Greene
	Possible Intervenor John Thompson
	Possible Intervenor John Thompson
	Possible Intervenor Judy Hines
	Possible Intervenor Judy Hines
	Possible Intervenor Khalif Ali
	Possible Intervenor Khalif Ali
	Possible Intervenor Maryn Formley
	Possible Intervenor Maryn Formley
	Possible Intervenor Patrick Beaty
	Possible Intervenor Patrick Beaty
	Possible Intervenor Richard Rafferty
	Possible Intervenor Richard Rafferty
	Possible Intervenor Susan Gobreski
	Possible Intervenor Susan Gobreski
	Possible Intervenor Timothy L. Kauffman
	Possible Intervenor Timothy L. Kauffman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Corrie Allen Woods
Service Method:	eService
Email:	cwoods@woodslawoffices.com
Service Date:	1/4/2022
Address:	One Oxford Centre, Suite 4300 301 Grant Street Coraopolis, PA 15219
Phone:	412-345-3198
Representing:	Possible Intervenor Amanda Cappelletti Possible Intervenor Amanda Cappelletti Possible Intervenor Art Haywood Possible Intervenor Art Haywood Possible Intervenor Carolyn Comitta Possible Intervenor Carolyn Comitta Possible Intervenor Christine Tartaglione Possible Intervenor Christine Tartaglione Possible Intervenor James Brewster Possible Intervenor James Brewster Possible Intervenor Jay Costa Possible Intervenor Jay Costa Possible Intervenor John Kane Possible Intervenor John Kane Possible Intervenor Judy Schwank Possible Intervenor Judy Schwank Possible Intervenor Lindsey Williams Possible Intervenor Lindsey Williams Possible Intervenor Lisa Boscola Possible Intervenor Lisa Boscola Possible Intervenor Marty Flynn Possible Intervenor Marty Flynn Possible Intervenor Nikil Saval Possible Intervenor Nikil Saval Possible Intervenor Steve Santarsiero Possible Intervenor Steve Santarsiero Possible Intervenor Tim Kearney Possible Intervenor Tim Kearney Possible Intervenor Vincent Hughes Possible Intervenor Vincent Hughes Possible Intervenor Wayne Fontana Possible Intervenor Wayne Fontana

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Jeffry William Duffy
Service Method:	eService
Email:	jduffy@bakerlaw.com
Service Date:	1/4/2022
Address:	Baker & Hostetler LLP 2929 Arch St., 12th Floor Philadelphia, PA 19104
Phone:	215--56-4-2916
Representing:	Possible Intervenor Bryan Cutler Possible Intervenor Bryan Cutler Possible Intervenor Kerry Benninghoff Possible Intervenor Kerry Benninghoff

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	John P. Lavelle Jr.
Service Method:	eService
Email:	john.lavelle@morganlewis.com
Service Date:	1/4/2022
Address:	Morgan, Lewis & Bockius LLP 1701 Market Street Philadelphia, PA 19103
Phone:	215-963-4824
Representing:	Possible Intervenor Adam Dusen Possible Intervenor Adam Dusen Possible Intervenor Athan Biss Possible Intervenor Athan Biss Possible Intervenor Daniel Mallinson Possible Intervenor Daniel Mallinson Possible Intervenor Jean Handley Possible Intervenor Jean Handley Possible Intervenor Jeffrey Cooper Possible Intervenor Jeffrey Cooper Possible Intervenor Jesse Stowell Possible Intervenor Jesse Stowell Possible Intervenor Joseph Amodei Possible Intervenor Joseph Amodei Possible Intervenor Kyle Hynes Possible Intervenor Kyle Hynes Possible Intervenor Michael Skros Possible Intervenor Michael Skros Possible Intervenor Mike Walsh Possible Intervenor Mike Walsh Possible Intervenor Myra Forrest Possible Intervenor Myra Forrest Possible Intervenor Priscilla McNulty Possible Intervenor Priscilla McNulty Possible Intervenor Rick Bryant Possible Intervenor Rick Bryant Possible Intervenor Sandra Strauss Possible Intervenor Sandra Strauss Possible Intervenor Sara Stroman Possible Intervenor Sara Stroman Possible Intervenor Susan Wood Possible Intervenor Susan Wood

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Joshua John Voss
Service Method:	eService
Email:	jvoss@kleinbard.com
Service Date:	1/4/2022
Address:	Three Logan Sqaure, 5th Floor 1717 Arch Street Philadelphia, PA 19103
Phone:	267--44-3-4114
Representing:	Possible Intervenor Bud Shuster Possible Intervenor Guy Reschenthaler Possible Intervenor Jeffrey Varner Possible Intervenor Ryan Costello Possible Intervenor Tom Marino

Served:	Kathleen A. Gallagher
Service Method:	eService
Email:	kag@glawfirm.com
Service Date:	1/4/2022
Address:	436 Seventh Avenue 31st Floor Pittsburgh, PA 15219
Phone:	412-717-1900
Representing:	Possible Intervenor Haroon Bashir Possible Intervenor Haroon Bashir Possible Intervenor Jeffrey Wenk Possible Intervenor Jeffrey Wenk Possible Intervenor Tegwyn Hughes Possible Intervenor Tegwyn Hughes Possible Intervenor Valerie Biancaniello Possible Intervenor Valerie Biancaniello

Served:	Kathleen Kotula
Service Method:	First Class Mail
Service Date:	1/4/2022
Address:	401 North Street, Room 301 Harrisburg, PA 171200500
Phone:	717-783-1657
Pro Se:	Other Kathleen Kotula Other Kathleen Kotula

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Kevin Michael Greenberg
Service Method:	eService
Email:	greenbergk@gtlaw.com
Service Date:	1/4/2022
Address:	1717 Arch Street Suite 400 Philadelphia, PA 19103
Phone:	215--98-8-7800
Representing:	Possible Intervenor Anthony H. Williams Possible Intervenor Anthony H. Williams Possible Intervenor Katie J. Muth Possible Intervenor Katie J. Muth Possible Intervenor Maria Collett Possible Intervenor Maria Collett Possible Intervenor Sharif Street Possible Intervenor Sharif Street

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Marco Santino Attisano
Service Method:	eService
Email:	marco@arlawpitt.com
Service Date:	1/4/2022
Address:	707 Grant Street Suite 2750 Pittsburgh, PA 15219
Phone:	412-438-8209
Representing:	Possible Intervenor Amanda Cappelletti Possible Intervenor Amanda Cappelletti Possible Intervenor Art Haywood Possible Intervenor Art Haywood Possible Intervenor Carolyn Comitta Possible Intervenor Carolyn Comitta Possible Intervenor Christine Tartaglione Possible Intervenor Christine Tartaglione Possible Intervenor James Brewster Possible Intervenor James Brewster Possible Intervenor Jay Costa Possible Intervenor Jay Costa Possible Intervenor John Kane Possible Intervenor John Kane Possible Intervenor Judy Schwank Possible Intervenor Judy Schwank Possible Intervenor Lindsey Williams Possible Intervenor Lindsey Williams Possible Intervenor Lisa Boscola Possible Intervenor Lisa Boscola Possible Intervenor Marty Flynn Possible Intervenor Marty Flynn Possible Intervenor Nikil Saval Possible Intervenor Nikil Saval Possible Intervenor Steve Santarsiero Possible Intervenor Steve Santarsiero Possible Intervenor Tim Kearney Possible Intervenor Tim Kearney Possible Intervenor Vincent Hughes Possible Intervenor Vincent Hughes Possible Intervenor Wayne Fontana Possible Intervenor Wayne Fontana

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Matthew Hermann Haverstick
Service Method:	eService
Email:	mhaverstick@kleinbard.com
Service Date:	1/4/2022
Address:	Three Logan Square, 5th Floor 1717 Arch Street Philadelphia, PA 19103
Phone:	215-568-2000
Representing:	Possible Intervenor Bud Shuster Possible Intervenor Bud Shuster Possible Intervenor Guy Reschenthaler Possible Intervenor Guy Reschenthaler Possible Intervenor Jeffrey Varner Possible Intervenor Jeffrey Varner Possible Intervenor Ryan Costello Possible Intervenor Ryan Costello Possible Intervenor Tom Marino Possible Intervenor Tom Marino

Served:	Matthew S. Salkowski
Service Method:	eService
Email:	Msalkowski@pahouse.net
Service Date:	1/4/2022
Address:	Pennsylvania House of Representatives Democratic Caucus, Office of Chief Counsel Harrisburg, PA 17111
Phone:	717--78-7-3002
Representing:	Possible Intervenor Joanna McClinton Possible Intervenor Joanna McClinton

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Shohin Hadizadeh Vance
Service Method:	eService
Email:	svance@kleinbard.com
Service Date:	1/4/2022
Address:	Three Logan Square 1717 Arch Street, 5th Floor Philadelphia, PA 19103
Phone:	267-443-4142
Representing:	Possible Intervenor Bud Shuster Possible Intervenor Guy Reschenthaler Possible Intervenor Jeffrey Varner Possible Intervenor Ryan Costello Possible Intervenor Tom Marino

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Thomas W. King III
Service Method:	eService
Email:	tking@dmkcg.com
Service Date:	1/4/2022
Address:	128 West Cunningham Street Butler, PA 16001
Phone:	(72-4) -283-2200

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Representing:

Possible Intervenor	Anthony Luther
Possible Intervenor	Anthony Luther
Possible Intervenor	Brandy Reep
Possible Intervenor	Brandy Reep
Possible Intervenor	Candee Barnes
Possible Intervenor	David Ball
Possible Intervenor	David Ball
Possible Intervenor	Evan Smith
Possible Intervenor	Evan Smith
Possible Intervenor	James Foreman
Possible Intervenor	James Foreman
Possible Intervenor	James Thompson
Possible Intervenor	James Thompson
Possible Intervenor	James Vasilko
Possible Intervenor	James Vasilko
Possible Intervenor	Jay Hagerman
Possible Intervenor	Jay Hagerman
Possible Intervenor	Jeffrey Piccola
Possible Intervenor	Jeffrey Piccola
Possible Intervenor	Joseph Renwick
Possible Intervenor	Joseph Renwick
Possible Intervenor	Justin Behrens
Possible Intervenor	Justin Behrens
Possible Intervenor	Kenneth Lunsford
Possible Intervenor	Kenneth Lunsford
Possible Intervenor	Kim Geyer
Possible Intervenor	Kristine Eng
Possible Intervenor	Kristine Eng
Possible Intervenor	Leslie Oshe
Possible Intervenor	Leslie Oshe
Possible Intervenor	Linda Daniels
Possible Intervenor	Linda Daniels
Possible Intervenor	Louis Capozzi
Possible Intervenor	Louis Capozzi
Possible Intervenor	Mary Owlett
Possible Intervenor	Mary Owlett
Possible Intervenor	Matthew Stuckey
Possible Intervenor	Matthew Stuckey
Possible Intervenor	Michael Slupe
Possible Intervenor	Michael Slupe
Possible Intervenor	Pamela Thompson
Possible Intervenor	Pamela Thompson
Possible Intervenor	Richard Rafferty

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Representing:	Possible Intervenor	Stephanie Renwick
	Possible Intervenor	Stephanie Renwick
	Possible Intervenor	Tammy Lunsford
	Possible Intervenor	Tammy Lunsford
	Possible Intervenor	Thomas Reed
	Possible Intervenor	Thomas Reep

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Edward David Rogers

(Signature of Person Serving)

Person Serving:	Rogers, Edward David
Attorney Registration No:	069337
Law Firm:	Ballard Spahr, LLP
Address:	Ballard Spahr Llp 1735 Market St Fl 51 Philadelphia, PA 191037599
Representing:	Petitioner Balchunis, Mary Ellen
	Petitioner Boman, Eugene
	Petitioner Carter, Carol Ann
	Petitioner Cassanelli, Lee
	Petitioner Cassanelli, Susan
	Petitioner DeWall, Tom
	Petitioner Donagi, Ron Y.
	Petitioner Feeman, Timothy G.
	Petitioner Fonkeu, Maya
	Petitioner Gordon, Gary
	Petitioner Gorkin, Pamela
	Petitioner Gressman, Philip T.
	Petitioner Guttman, Michael
	Petitioner Hill, Brady
	Petitioner Isaak, Garth
	Petitioner Marsh, David P.
	Petitioner McMahon, Liz
	Petitioner McNulty, Stephanie
	Petitioner Milazzo, Roseanne
	Petitioner Myers, Amy
	Petitioner Parrilla, Monica
	Petitioner Poyourow, Rebecca
	Petitioner Rosenberger, James L.
	Petitioner Siegel, Burt
	Petitioner Tapp, Kristopher R.
	Petitioner Temin, Janet
	Petitioner Tung, William
	Petitioner Wachman, Lynn