

**IN THE SUPREME COURT OF PENNSYLVANIA**

Carol Ann Carter; Monica Parrilla;	:	CASES CONSOLIDATED
Rebecca Poyourow; William Tung;	:	
Roseanne Milazzo; Burt Siegel;	:	No. 7 MM 2022
Susan Cassanelli; Lee Cassanelli;	:	
Lynn Wachman; Michael Guttman;	:	<b>AMICUS PARTICIPANTS'</b>
Maya Fonkeu; Brady Hill; Mary Ellen;	:	<b>("CITIZEN-VOTERS")</b>
Balchunis; Tom DeWall, Stephanie	:	<b>EXCEPTIONS TO REPORT</b>
McNulty and Janet Temin,	:	<b>CONTAINING PROPOSED</b>
	:	<b>FINDINGS OF FACT AND</b>
Petitioners,	:	<b>CONCLUSIONS OF LAW</b>
	:	
v.	:	Counsel of Record for Amicus
	:	Participants ("Citizen-Voters"):
Leigh Chapman, in her official	:	
capacity as the Acting Secretary of	:	Dillon, McCandless, King,
the Commonwealth of Pennsylvania;	:	Coulter & Graham L.L.P.
Jessica Mathis, in her official	:	
capacity as Director for the	:	Thomas W. King III
Pennsylvania Bureau of Election	:	PA. ID No. 21580
Services and Notaries,	:	<a href="mailto:tking@dmkcg.com">tking@dmkcg.com</a>
	:	
Respondents,	:	Thomas E. Breth
	:	PA. ID No. 66350
	:	<a href="mailto:tbreth@dmkcg.com">tbreth@dmkcg.com</a>
	:	
Phillip T. Gressman; Ron Y. Donagi;	:	Jordan P. Shuber
Kristopher R. Tapp; Pamela Gorkin;	:	PA. ID No. 317823
David P. Marsh; James L.	:	<a href="mailto:jshuber@dmkcg.com">jshuber@dmkcg.com</a>
Rosenberger; Amy Myers; Eugene	:	
Boman; Gary Gordon; Liz	:	128 West Cunningham Street,
McMahon; Timothy G. Freeman;	:	Butler, Pennsylvania 16001
and Garth Isaak,	:	724-283-2200 (phone)
	:	724-283-2298 (fax)
Petitioners,	:	
	:	
v.	:	
	:	
Leigh Chapman, in her official	:	
capacity as the Acting Secretary of	:	

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

Respondents, :

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Leslie Osche, Kim Geyer, Michael T. :  
Slupe, Candee Barnes, Thomas :  
Reep, Brandy Reep, Kenneth :  
Lunsford, Tammy Lunsford, James :  
Thompson, Pamela Thompson, :  
Joseph Renwick, Stephanie :  
Renwick, Louis Capozzi, David Ball, ;  
Mary E. Owlett, Kristine Eng, Justin :  
Behrens, James P. Foreman, :  
Matthew J. Stuckey, Anthony J. :  
Luther, Linda C. Daniels, Jeffrey :  
Piccola, James Vasilko, Jay :  
Hagerman, and Evan P. Smith, :

Amicus Participants, :

v. :

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

Respondents.

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**AMICUS PARTICIPANTS' ("CITIZEN-VOTERS") EXCEPTIONS TO  
REPORT CONTAINING PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Amicus Participants ("Citizen-Voters")<sup>1</sup>, by and through their undersigned counsel, hereby file the within Exceptions to the Master's Report (authored by the Hon. Patricia McCollough) Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendations of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar/Schedule ("Master's Report").

**Introduction**

The Master's Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendations of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar/Schedule ("Master Report") was a well-reasoned and thorough review of the maps submitted in the present matter. Citizen Voters recognize the efforts set forth by the parties to the present matter as well as the Master

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<sup>1</sup> Leslie Osche, Kim Geyer, Michael T. Slupe, Candee Barnes, Thomas Reep, Brandy Reep, Kenneth Lunsford, Tammy Lunsford, James Thompson, Pamela Thompson, Joseph Renwick, Stephanie Renwick, Louis Capozzi, David Ball, Mary E. Owlett, Kristine Eng, Justin Behrens, James P. Foreman, Matthew J. Stuckey, Anthony J. Luther, Linda C. Daniels, Jeffrey Piccola, James Vasilko, Jay Hagerman, and Evan P. Smith.

in accomplishing, “the ‘unwelcome obligation’” of choosing an appropriate congressional redistricting plan on a heavily restricted timeline.

Notwithstanding the Master’s thorough and well-reasoned report, several matters regarding the “Citizen-Voters” map and submission necessitate the filing of the present exceptions. While the Master’s recommended map, HB 2146, certainly satisfies the constitutional requirements for a proposed congressional map in the Commonwealth of Pennsylvania, the “Citizen-Voters” map, and in the alternative, the “Reschenthaler 1” map, perform better than HB 2146 in several of the metrics used by the Master in determining which map to recommend to this Court. In light of these alleged errors, Amicus Participants file the within Exceptions to the Master’s Report, stating in support thereof as follows:

### **Exception One**

The Master erred in extending deference to the HB 2146 Map for the sole reason that HB 2146 had gone through the proper legislative channels prior to the present litigation as the “Citizen-Voters” map, and in the alternative, the “Reschenthaler 1” map, better satisfy the constitutional requirements of a proposed congressional district map in the Commonwealth of Pennsylvania and in particular with respect to “splits” or divisions of counties.

## **Exception Two**

The Master erred in declining to recommend the adoption of the “Citizen-Voters” map because “it has a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one-person deviation.” See Master’s Report, at pg. 204. As noted in the Master Report’s Proposed Findings of Fact, Conclusions of Law, and Adoption of Map Recommendation, Finding 18 on p. 192, the Carter Plan and the House Democratic Plan are the only plans that result in a two-person deviation. See Master’s Report, FF 18, at pg. 192. Moreover, a review of the “Citizen-Voters” map shows that the population deviation for each district is set forth on the face of the map and such figures show that no district deviated by more than one person. A true and correct copy of the data sheets utilized in drafting the Citizen Voters proposed 17-district congressional map, showing a maximum deviation of one person, is attached hereto as “Exhibit A.”

## **Exception Three**

The Master erred in declining to recommend adoption of the Citizen-Voter’s Plan because “it was not accompanied by an expert report or testimony consequently, the Court received no testimonial or written explanation concerning why the map drew the lines in the particular manner

that it did and to demonstrate why the divides in the maps were absolutely necessary to achieve population equality as opposed to some other secondary or impermissible goal.” See Master’s Report, at pg. 204. As noted by the Commonwealth Court’s Order dated January 14, 2022, “Amicus Participants who wish to submit for the Court’s consideration one (1) proposed 17-district congressional redistricting map/plan . . . and, *if the Amicus Participant chooses to do so*, a supporting brief and/or a support expert report, by 5:00 p.m. on Monday, January 24, 2022.” (emphasis added). Accordingly, an expert report was not mandated nor required for an Amicus Participant’s map(s) to be considered by the Master.

#### **Exception Four**

The Master erred in finding that, “[t]he Citizen Voters did not provide an expert report to support their map. Consequently, the Court received no expert testimonial or written explanation concerning why the map drew the lines in the particular manner that it did, and, perhaps, more importantly, to demonstrate why the divides in the maps were absolutely necessary to achieve population equality as opposed to some other secondary or impermissible goal. There was no discussion or evidence whatsoever presented by Citizen Voters that their district lines preserved communities of interests. Left with this evidentiary mode of speculation, the Court provides

little to no weight to the map submitted by the Citizen Voters.” See Master’s Report, FF 11 at pg. 156. On the contrary, the Amicus Participants’ (“Citizen-Voters”) Proposed Map of Congressional Districts, filed on January 24, 2022, clearly shows “Citizen-Voters” efforts to maintain communities of interest. See Amicus Participants’ (“Citizen-Voters”) Proposed Map of Congressional Districts, at Pg. 1-2.

### **Exception Five**

In the alternative, the Master erred in declining to adopt Reschenthaler 1 Map as the Reschenthaler 1 Map had the lowest county split of all the maps presented (13 Counties), had the lowest “county pieces” (29), had the lowest municipal splits (16 Municipalities), tied for the lowest number of “municipal pieces” (33), and “[is] consistent with the Free and Equal Elections Clause of the Pennsylvania Constitution, and, also, the aspirations and ideals expressed by that constitutional provision as pronounced by the Court in LWV II due to [its] compactness, degree of partisan fairness, and specific development of congressional districts.” See Master’s Report, at FF 24 (pg. 193); FF 54 (pg. 206); FF 57 (pg. 207).

## Exception Six

The Master erred in finding that, “the Senate Democratic Caucus 2 Plan, the House Democratic Caucus Plan, the Draw the Lines Plan, the Reschenthaler 1 Plan, and the Citizen-Voters Plan have three incumbent pairings and as such will be given less weight in this regard,” as the “protection of incumbents,” is a factor to be wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts. See *League of Women Voters v. Commonwealth*, 178 A.3d 737, 817 (Pa. 2018). The Reschenthaler 1 Map and the Citizen-Voters Map in actuality have only one incumbent pairing.

WHEREFORE, Amicus Participants (“Citizen-Voters”) respectfully request that this Honorable Court sustain their exceptions to the Master’s Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendations of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar/Schedule (“Master Report”) and request that this Honorable Court adopt the Citizen-Voters’ map or, in the alternative, the Reschenthaler 1 map, as the map closest in accomplishing the Citizen-Voters’ “aim to maintain county line integrity in the plan.”



Respectfully submitted,

**DILLON, McCANDLESS, KING,  
COULTER & GRAHAM, L.L.P.**

By: /s/ Thomas W. King, III  
Thomas W. King, III  
PA. I.D. No. 21580  
[tking@dmkcg.com](mailto:tking@dmkcg.com)

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<b>District</b>	<b>Total Population</b>	<b>Deviation</b>
District 1	764865	0
District 2	764865	0
District 3	764864	-1
District 4	764865	0
District 5	764865	0
District 6	764865	0
District 7	764864	-1
District 8	764865	0
District 9	764864	-1
District 10	764865	0
District 11	764865	0
District 12	764865	0
District 13	764865	0
District 14	764864	-1
District 15	764865	0
District 16	764865	0
District 17	764864	-1

EXHIBIT A

## **CERTIFICATE OF COMPLIANCE**

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

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

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**CERTIFICATE OF SERVICE**

I certify that this filing was served via PACFile upon all counsel of record this 14<sup>th</sup> day of February, 2022.

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

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