

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

7 MM 2022

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

v.

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

**EXCEPTIONS OF SENATOR JAY COSTA AND THE SENATE
DEMOCRATIC CAUCUS TO THE FEBRUARY 7, 2022 REPORT OF THE
SPECIAL MASTER**

Proceedings Following Exercise of Extraordinary Jurisdiction Over
Petitioners' Petition for Review and Action Previously Filed at
Commonwealth Court of Pennsylvania Docket No. 464 M.D. 2021 and the
February 7, 2022 Special Master's Report

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Counsel for Intervenors

Senator Jay Costa, Et Al. (Senate Democratic Caucus)

EXCEPTIONS OF SENATOR JAY COSTA AND THE SENATE DEMOCRATIC CAUCUS TO THE FEBRUARY 7, 2022 REPORT OF THE SPECIAL MASTER

With a February 2, 2022 Order, this Court granted an application to assume extraordinary jurisdiction over the proposed Congressional redistricting process that had been initiated in the Commonwealth Court. With the same order, the Court designated Judge Patricia A. McCullough, who had been conducting the Commonwealth Court proceedings, to serve as the Special Master for the Court. It directed her to file recommended findings of fact and conclusions of law, with a recommended redistricting plan and proposed changes to the elections calendar, by February 7, 2022. The Court allowed any party or *amicus curiae* to file any exceptions to the Special Master's Report, with any supporting brief, by February 14, 2022. *See id.*

In accordance with the Court's order, Senator Jay Costa and the Senate Democratic Caucus submit their Exceptions to the February 7, 2022 Report of the Special Master. Their brief in support of the exceptions is being contemporaneously filed.

EXCEPTIONS TO THE FEBRUARY 2, 2022 REPORT

As further explained in the accompanying Brief in Support of the Exceptions, Senator Jay Costa and the Senate Democratic Caucus except to the Special Master's February 2, 2022 Report for the following reasons:

1. The Special Master fundamentally misinterpreted and misapplied this Court's decision in *League of Women Voters v. Com.*, 178 A.3d 737 (Pa. 2018).
2. The Special Master improperly conflated the distinct concepts of symmetry and proportionality.
3. The Special Master erred in making a finding of credibility with respect to two witnesses, Dr. Michael Barber and Dr. Keith Naughton, contrary to the record evidence and the witnesses' admissions.
4. The Special Master erred as a matter of law in incorrectly concluding that the City of Pittsburgh may never be divided into multiple Congressional districts.
5. The Special Master concluded, contrary to this Court's decision in *League of Women Voters*, that "political geography" justifies vote dilution.
6. The Special Master erred in affording deference to a redistricting plan that had passed through the General Assembly but which the Governor vetoed, instead of concluding it was a failed legislative enactment that cannot be afforded any deference without violating the separation of powers.
7. The Special Master erred in proposing an election calendar that ignores the realities of other election-related matters before this Court, particularly the Legislative Reapportionment Commission's recent approval of a Final Plan for the State House and State Senate districts.

For these reasons and for the reasons set forth in their supporting Brief, Senator Jay Costa and the Senate Democratic Caucus ask this Court to adopt one of the plans that the Senate Democratic Caucus submitted or, at a minimum, to reject the Special Master's recommendation of the map identified as HB 2146. They also ask the Court to adopt a schedule for the

2022 Primary Election and pre-Primary calendar that provides for a single, unified Primary Election involving both state and federal elections. With appropriate consideration of the other proceedings before this Court, it may be possible to preserve the May 17, 2022 Primary Election date.

Respectfully Submitted:

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Dated: February 14, 2022

*On Behalf of Counsel for Intervenors
Democratic Senate Caucus*

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.

Submitted by: Clifford B. Levine

Signature. _____



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via PACfile Proof of Service, this 14th day of February, 2022, upon all counsel.

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Dated: February 14, 2022

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