

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO INTERVENE AS DEFENDANTS**

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INTRODUCTION

This lawsuit is a collateral attack on litigation pending in the Pennsylvania Supreme Court, which was brought by a group of Pennsylvania voters (the “Carter Petitioners”).¹ The Carter Petitioners first initiated that state court action two months ago, when it became evident that Pennsylvania’s political branches would reach an impasse and not enact a lawful congressional map during this redistricting cycle in time for the coming election deadlines. Now that the Pennsylvania Supreme Court is on the cusp of approving a map that would remedy the Carter Petitioners’ (and millions of other Pennsylvania voters’) injuries, the Plaintiffs in this case have taken the radical step of initiating this action in the hopes that they can convince the federal judiciary to void the Pennsylvania Supreme Court’s remedy. Specifically, Plaintiffs ask this Court to effectively override and nullify the Pennsylvania Supreme Court’s order and whatever new map it adopts by directing Defendants to implement an at-large election. As such, this lawsuit unquestionably implicates the Carter Petitioners’ interests. Not only does it threaten the remedy that they have worked to secure in the

¹ The proposed intervenors are Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael Guttman, Maya Fonkeu, Brady Hill, Mary Ellen Balchunis, Tom Dewall, and Stephanie McNulty. In the action now pending before the Pennsylvania Supreme Court, the proposed intervenors (along with an additional individual voter who joined that suit but is not seeking intervention here) are styled as “petitioners.” *Carter v. Chapman*, No. 7 MM 2022, 2022 WL 304580 (Pa. Feb. 2, 2022). Accordingly, this motion refers to the proposed intervenors as the “Carter Petitioners.”

course of the state court litigation, it also threatens to force the Carter Petitioners to vote in an election without any adopted congressional district map as required by law.

The Carter Petitioners' motion to intervene is timely, they clearly possess an interest in the subject matter of the action such that denial of their intervention motion would severely affect or impair their ability to protect their interests, and their interests are not adequately represented by the existing parties to the lawsuit. As such, the Carter Petitioners are entitled to intervene in this case as a matter of right. *See* Fed. R. Civ. P. 24(a)(2). In the alternative, the Carter Petitioners respectfully request that the Court grant them permissive intervention under Rule 24(b).

BACKGROUND

Following the 2020 Census, Pennsylvania lost a seat in the U.S. House of Representatives. As a result, and due to general population shifts, the state had to redraw its existing congressional district map. *See* Am. Compl. Ex. 1 ¶¶ 2-3, ECF No. 7-1. Although the Pennsylvania General Assembly and Governor had several months to enact a new congressional district map, the two sides failed to reach an agreement and came to an impasse. *Id.* ¶ 5. The Carter Petitioners foresaw this impasse and initially filed a lawsuit to prepare for the eventuality in April 2021. *See* Exhibit A. That action was dismissed without prejudice based on the state court's

conclusion that it was not yet ripe. *See Carter v. Degraffenreid*, No. 132 M.D. 2021, 2021 WL 4735059, at *7 (Pa. Commw. Ct. Oct. 8, 2021). When the political branches then failed to reach agreement, the Carter Petitioners filed a new complaint in Pennsylvania Commonwealth Court on December 17, 2021, challenging the existing 2018 court-drawn map as violating: (1) the Free and Equal Elections Clause of the Pennsylvania Constitution; (2) Article I, Section 2 of the U.S. Constitution requiring equal population in congressional districts; and (3) 2 U.S.C. § 2c (2018), which provides that a state should have “a number of [congressional] districts equal to the number of Representatives to which such State is so entitled.” Am. Compl. Ex. 1 ¶ 3. The Carter Petitioners asked the Commonwealth Court to declare Pennsylvania’s existing 2018 congressional district map unconstitutional and adopt a new congressional district map that satisfies constitutional requirements. *Id.* at 18-19.

That litigation continued apace through December, January, and February. On January 24, 2022, the Carter Petitioners, along with other petitioners, intervenors, and *amicus* participants, submitted proposed congressional redistricting maps to the Commonwealth Court for consideration. *See* Am. Compl. Ex. 4, ECF No. 7-4. The Commonwealth Court held an evidentiary hearing on January 27 and January 28 on the proposed maps, and provided notice that if the General Assembly and Governor failed to adopt a new congressional district map by January 30, the Commonwealth

Court would proceed to issue an opinion adopting a new congressional district map. *See* Am. Compl. Ex. 7 at 14-15, ECF No. 7-7. The General Assembly and Governor subsequently failed to adopt a new congressional district map by January 30. *See id.* at 15.

On February 2, the Pennsylvania Supreme Court took extraordinary jurisdiction over the redistricting litigation. *See* Am. Compl. Exs. 5, 6, ECF Nos. 7-5, 7-6.² In doing so, the Pennsylvania Supreme Court designated the Commonwealth Court judge who presided over the hearing as Special Master and ordered oral argument for February 18. *Id.* On February 9, citing the upcoming oral argument on the proposed congressional district maps, the Pennsylvania Supreme Court ordered that the state's General Primary Calendar be "temporarily suspended" pending further order from the Supreme Court. *See* Am. Compl. Ex. 8, ECF No. 7-8.

Plaintiffs did not initiate the instant action until February 11, 2022. *See generally* Compl., ECF No. 1. Nine days after that, Plaintiffs filed an Amended Complaint adding an additional plaintiff. *See generally* Am. Compl., ECF No. 7. In this action, Plaintiffs seek an extraordinary remedy: they ask this Court to override

² The Carter Petitioners previously filed an application for extraordinary relief in December 2021 requesting that the Pennsylvania Supreme Court exercise extraordinary jurisdiction and/or King's Bench power over these matters. *See* Am. Compl. Ex. 2, ECF No. 7-2. The Supreme Court denied the application at that time, but did so specifically without prejudice to the Carter Petitioners' right to seek the same relief in the future. *See* Am. Compl. Ex. 3, ECF No. 7-3.

the impending Pennsylvania Supreme Court ruling adopting a new congressional district map and enjoin any relief ordered by that court to remedy the Carter Petitioners' constitutional and statutory injury. Plaintiffs allege that the Elections Clause of the United States Constitution prohibits Defendants from implementing a congressional district map drawn by the Pennsylvania Supreme Court because the state's judiciary is not part of "the Legislature." *Id.* ¶ 42. Plaintiffs also allege that 2 U.S.C. § 2a(c)(5) requires Pennsylvania to hold at-large elections. *Id.* ¶ 43.

On the same day that Plaintiffs filed their Amended Complaint, Plaintiffs also filed an Emergency Motion for Temporary Restraining Order or Preliminary Injunction seeking an order that Pennsylvania state election officials must conduct at-large elections for the state's 2022 congressional delegation, regardless of the Pennsylvania Supreme Court's resolution of the ongoing state court action, unless and until the General Assembly enacts a new congressional district map. *See* Mot. Prelim. Inj. at 12, ECF No. 11.

ARGUMENT

This federal lawsuit is a collateral attack on the state court litigation brought by the Carter Petitioners. Plaintiffs seek to nullify the relief that is shortly anticipated from the Pennsylvania Supreme Court, including a permanent injunction on the use of the state's current, unconstitutional 2018 congressional district map and the implementation of a new constitutional district map. As a result, this lawsuit

threatens the Carter Petitioners' constitutional and statutory rights and leaves them with no alternate means by which to vindicate them.

The Carter Petitioners' interests will not be adequately represented by the existing Defendants in this case, none of whom shares the Carter Petitioners' rights and interests as voters who will elect Representatives from each of the districts to which the state is entitled. *See* 2 U.S.C. § 2c. The Carter Petitioners are thus entitled to intervene in this action as of right under Rule 24(a)(2), or alternatively by permission under Rule 24(b)(1)(B).

I. The Carter Petitioners are entitled to intervene as a matter of right under Rule 24(a)(2).

The Carter Petitioners satisfy the requirements to intervene as of right because (1) their motion to intervene is timely, (2) they possess an interest in the subject matter of the action, (3) denial of the motion to intervene would affect or impair their ability to protect their interests, and (4) their interests are not adequately represented by the existing parties to the lawsuit. Fed. R. Civ. P. 24(a)(2); *Harris v. Pemsley*, 820 F.2d 592, 596 (3d Cir. 1987).

A. The Carter Petitioners' motion to intervene is timely.

Intervention will neither delay the resolution of this matter nor prejudice any party. This motion to intervene follows just two days after Plaintiffs filed their Amended Complaint and Motion for Temporary Restraining Order or Preliminary Injunction. Just yesterday the Court issued the current Scheduling Order, no motions

have been fully briefed and no hearings have been held—and thus no party can legitimately claim that intervention by the Carter Petitioners would cause any prejudicial delay. *See* Order ¶¶ 1-5, ECF No. 9. The Carter Petitioners are prepared to follow the Court’s current briefing schedule, as well as any future briefing schedules the Court orders, including on Plaintiffs’ Motion for Temporary Restraining Order or Preliminary Injunction. Far from delaying, the Carter Petitioners have an interest in resolving this matter as quickly as possible to ensure the Pennsylvania Supreme Court’s ordered map goes into effect in time for the state’s upcoming 2022 elections. For all of these reasons, the motion is timely. *See, e.g., In re Cmty. Bank of N. Va.*, 418 F.3d 277, 314 (3d Cir. 2005) (finding intervention timely where hearing schedule had been set but no hearing had yet been conducted).

B. The Carter Petitioners possess a significant, legally cognizable interest in this litigation.

The Carter Petitioners are entitled to intervene because they have a “significant protectable” interest in the outcome of this lawsuit. *Benjamin ex rel. Yock v. Dep’t of Pub. Welfare of Pa.*, 701 F.3d 938, 951 (3d Cir. 2012) (proposed intervenors “are entitled to intervene as to specific issues so long as their interest in those issues is significantly protectable”).

This lawsuit threatens the Carter Petitioners’ interests in voting in properly apportioned congressional districts and protecting the ongoing state court litigation

that they brought. When it became clear that Pennsylvania's redistricting process was headed for an impasse, the Carter Petitioners promptly filed a petition in Commonwealth Court seeking to replace the unconstitutional existing map with a new congressional district map that is both equally apportioned and fair. The Carter Petitioners submitted a congressional district map for consideration and defended that map through multiple rounds of briefing and in-person proceedings in the Commonwealth Court and the Pennsylvania Supreme Court in order to secure a constitutional map in time for the upcoming 2022 elections. The Pennsylvania Supreme Court indicated it will likely adopt a new, lawful congressional district map this week.

Through the instant lawsuit, Plaintiffs seek to nullify that forthcoming ruling from the Pennsylvania Supreme Court by ordering Defendants to hold at-large congressional elections, thereby precluding the relief that the Carter Petitioners will obtain in state court. When an action is brought that, if successful, could alter a favorable judgment secured by a proposed intervenor, that intervenor has a substantial interest in the action. *See Jansen v. City of Cincinnati*, 904 F.2d 336, 342 (6th Cir. 1990) (holding that district court was required to grant intervention in a case challenging a fire department's use of affirmative action, where fire department implemented affirmative action program as part of a consent decree to which proposed intervenors were a party). Thus, the relief Plaintiffs seek directly implicates

the Carter Petitioners' significant and cognizable interests in both the state court litigation they brought and the continued protection of their constitutional and statutory rights.

The Carter Petitioners' interests in this lawsuit could not be more significant. The Pennsylvania Supreme Court will imminently adopt a new congressional district map because the state's current congressional district map violates the Carter Petitioners' rights under the Free and Equal Elections Clause of the Pennsylvania Constitution, Article I, Section 2 of the U.S. Constitution, and 2 U.S.C. § 2c. Plaintiffs seek to force the 2022 elections to proceed under a map that violates the Carter Petitioners' rights to elect congressional representatives according to a map that includes 17 districts, equal to the number of representatives to which Pennsylvania is entitled. 2 U.S.C. § 2c. The Carter Petitioners thus have a protectable interest in enforcing these rights guaranteed to them by law.

There can be no greater evidence of that "significant" legal interest at stake than the fact that Plaintiffs are attempting to change the outcome of the Carter Petitioners' state court lawsuit by attempting to override the forthcoming state court remedy. Indeed, a long line of federal court jurisprudence requires federal courts to abstain from interfering while redistricting is before a state court, as it is here. *Grove v. Emison*, 507 U.S. 25, 33 (1993) ("In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting

where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself.”). Additionally, the United States Supreme Court has squarely held that the federal provision for at-large elections, upon which Plaintiffs’ lawsuit is based, is “inapplicable *unless* the state legislature, and state . . . courts, have all failed to redistrict pursuant to § 2c,” and thus only functions as a “last-resort remedy to be applied when . . . no constitutional redistricting plan exists and there is no time for either the State’s legislature or the courts to develop one.” *Branch v. Smith*, 538 U.S. 254, 275 (2003) (emphasis in original). Because Plaintiffs’ core claims ignore prevailing U.S. Supreme Court precedent and fail to recognize the primacy of the Pennsylvania Supreme Court’s role in ordering the enactment of a constitutional district map at this juncture, the Carter Petitioners have demonstrated the existence of a “significant” legal interest to warrant intervention in this case.

C. The disposition of this lawsuit will impair the Carter Petitioners’ ability to protect their interests.

Denial of the motion to intervene will, as a practical matter, impair or impede the Carter Petitioners’ ability to protect their interests. Where a proposed intervenor has a protectable interest in the outcome of the litigation, courts have “little difficulty concluding” that their interests will be impaired. *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011). When weighing this factor, courts are to “consider the practical consequences of the litigation in passing on an application to intervene as of right.” *Harris*, 820 F.2d at 601; Fed. R. Civ. P. 24

advisory committee's note to 1966 amendment ("If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene . . .").

Intervention is warranted if the proposed remedy threatens to harm intervenors. *See Brody By and Through Sugzdinis v. Spang*, 957 F.2d 1108, 1123 (3d Cir. 1992); *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1185 n.15 (3d Cir. 1994). And litigants that obtained a judgment in a prior action are entitled to intervene as of right in a later action that threatens the relief awarded under the prior judgment. *See Teague v. Bakker*, 931 F.2d 259, 261-62 (4th Cir. 1991) (finding that intervenors' "ability to protect their interest would be impaired or impeded" by a judgment that would put the intervenors' ability to satisfy a prior judgment at risk).

Here, the Pennsylvania Supreme Court will imminently approve a new congressional district map in the ongoing state court case, thus remedying the Carter Petitioners' constitutional and statutory injuries in time for the state to conduct primary elections using that new map this spring. Plaintiffs' lawsuit not only puts the remedy the Carter Petitioners will inevitably obtain at risk, but also threatens to force the Carter Petitioners to vote in an election without any enacted congressional district map as required by law. *See* 2 U.S.C. § 2c. As a result, this lawsuit unquestionably threatens the Carter Petitioners' ability to protect their interests.

D. The Carter Petitioners' interests are not adequately represented by Defendants.

The existing Defendants do not adequately represent the Carter Petitioners' interests. The burden to satisfy this factor is "minimal." *Dev. Fin. Corp. v. Alpha Hous. & Health Care, Inc.*, 54 F.3d 156, 162 (3d Cir. 1995). In particular, when one of the original parties to the suit is a government entity whose positions "are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it," the Third Circuit has found that "the burden [of establishing inadequacy of representation] is comparatively light." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992); *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)). Moreover, intervenors need only show that "representation of [their] interest *may* be inadequate," and a court need only find "sufficient doubt about the adequacy of representation to warrant intervention." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added) (quoting 3B J. Moore, Fed. Prac. 24.09-1(4) (1969)).

Under these circumstances, the Carter Petitioners clearly satisfy the "minimal" burden of demonstrating their "interests are not adequately represented by the existing parties." *Dev. Fin. Corp.*, 54 F.3d at 162 (quoting *Brody*, 957 F.2d at 1115). The arguments that Defendants have asserted in the related state redistricting actions

in the Commonwealth Court and Pennsylvania Supreme Court clearly illustrate that they do not adequately represent the Carter Petitioners as Pennsylvania voters. Defendants' primary interest is an institutional one—the administration of elections. For example, in response to the Special Master's Report on a remedial map, two of the Defendants in this case (the Acting Secretary of State and Director of Elections), as Respondents in the state court proceedings, stated that their "roles are two-fold: (1) to provide the Court with information where necessary; and (2) to minimize disruption of the 2022 elections by keeping the Court and the other parties apprised of election schedules and potential alterations to those schedules." *See* Exhibit B. Governor Wolf's involvement in both the state court proceeding and this one is likewise limited to his institutional and constitutional role. *See* Exhibit C (explaining that the Governor's "legally enforceable interest" is "by virtue of his constitutional role in the redistricting process"). Thus, all three Defendants' primary interest in these matters is distinct from the Carter Petitioners' interest, which is their constitutional and statutory rights as voters.

Notably, Defendants do not hold or assert the same rights as the Carter Petitioners. The Carter Petitioners are voters whose individual constitutional and statutory rights will be violated absent a constitutional congressional district map. Defendants are all parties in their official capacities as government officials and, in that capacity, have no constitutional voting rights that are implicated in this case

or threatened by the lack of a lawful congressional district map. Indeed, no existing party to this litigation asserts that Pennsylvania's current map violates their constitutional rights.

Nor does any existing party have the same interest as the Carter Petitioners in defending the state court litigation and the remedy that the Pennsylvania Supreme Court will imminently order to resolve the Carter Petitioners' state court lawsuit. The Carter Petitioners must be permitted to intervene to represent their own interests as the petitioners in the state court action that this case seeks to collaterally attack.

In *Corman v. Torres*, the court granted intervention in strikingly similar circumstances. There, a group of voters had successfully challenged Pennsylvania's congressional district map in state court, and the Pennsylvania Supreme Court enjoined use of the map and ordered use of a new map for the upcoming election. Thereafter, a group of Republican legislators and congressmen filed a collateral attack in federal court, asking the federal court to undo the Pennsylvania Supreme Court's remedy. *See Corman v. Torres*, 287 F. Supp. 3d 558 (M.D. Pa. 2018). The state court plaintiffs moved to intervene in the federal suit, asserting virtually identical interests as the Carter Petitioners here. The three-judge federal panel—comprised of Circuit Judge Jordan, Chief District Judge Conner, and District Judge Simandle—granted the motion to intervene, even though the original defendants in the case included state election officials who supported the state court's judgment

and opposed the relief that the congressmen sought. Order at 1-2, *Corman v. Torres*, 287 F. Supp. 3d 558, No 1:18-cv-00443-CCC-KAJ-JBS (M.D. Pa. Mar. 2, 2018), ECF No. 85. *Corman* strongly supports intervention by the Carter Petitioners—indeed, if anything, the case for intervention is even stronger here, given that the state court lawsuit here is ongoing, whereas in *Corman* it had already concluded.

II. In the alternative, the Carter Petitioners request that the Court grant them permission to intervene under Rule 24(b).

Even if the Carter Petitioners were not entitled to intervene as of right, permissive intervention would be warranted under Rule 24(b). The Court has broad discretion to grant a motion for permissive intervention when it determines that: (1) the proposed intervenor “has a claim or defense that shares with the main action a common question of law or fact,” and (2) the “intervention will not unduly delay the proceedings or prejudice the original parties’ rights.” *See* Fed. R. Civ. P. 24(b)(1)(B) and (b)(3). Even where courts deny intervention as of right, permissive intervention may nonetheless be proper or warranted. *See Hoots v. Pennsylvania*, 672 F.2d 1133, 1136 (3d Cir. 1982).

For the reasons set forth above, the motion is timely, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties, and the Carter Petitioners are not adequately represented by the existing defendants. The Carter Petitioners will undoubtedly raise common questions of law and fact in defending this lawsuit and the Pennsylvania Supreme Court’s adoption of a new

congressional district map that is constitutionally and statutorily compliant, including questions regarding this Court's authority to enjoin that state court's remedy. Beyond that, the Carter Petitioners' interests implicate some of the most fundamental rights protected by the Pennsylvania Constitution: the right to free elections, to equal protection under the law, and to freedom of speech and assembly. Their participation in this action will contribute to the full development of the factual and legal issues and will aid the Court in the adjudication of this matter. And it would be highly unfair to adjudicate a collateral attack on an ongoing state court lawsuit without allowing the petitioners in that state court suit to participate and defend their rights. This federal suit directly threatens the Carter Petitioners' rights and the relief forthcoming in state court, and the Carter Petitioners therefore should be able to participate in this case.

CONCLUSION

For the reasons stated above, the Carter Petitioners respectfully request that the Court grant their motion to intervene as a matter of right under Fed. R. Civ. P. Rule 24(a)(2) or, in the alternative, permit them to intervene under Rule 24(b).

Dated: February 22, 2022.

Respectfully submitted,

/s/ Elizabeth V. Wingfield

Timothy D. Katsiff (PA 75490)

Elizabeth V. Wingfield (PA 32477)

Edward D. Rogers (PA 69337)*

Marcel S. Pratt (PA 307483)*

Robert J. Clark (PA 308105)*

Michael R. McDonald (PA 326873)*

Paul K. Ort (PA 326044)*

Ballard Spahr LLP

1735 Market Street, 51st Floor

Philadelphia, PA 19103

KatsiffT@ballardspahr.com

WingfieldE@ballardspahr.com

RogersE@ballardspahr.com

PrattM@ballardspahr.com

ClarkR@ballardspahr.com

McDonaldM@ballardspahr.com

OrtP@ballardspahr.com

T: (215) 665-8500

F: (215) 864-8999

Abha Khanna*

Elias Law Group LLP

1700 Seventh Ave, Suite 2100

Seattle, WA 98101

akhanna@elias.law

T: (206) 656-0177

Lalitha D. Madduri*

Jyoti Jasrasaria*

Tina Meng*

Elias Law Group LLP

10 G St. NE, Suite 600

Washington, D.C. 20002

lmadduri@elias.law

jjasrasaria@elias.law

tmeng@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

Counsel for Proposed Intervenors

**Motions for Pro Hac Vice
Forthcoming*

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum of Law in Support of Motion to Intervene as Defendants contains 3,869 words, based on the word count of the word processing system used to prepare this brief, and thereby complies with the Local Civil Rule 7.8.

DATED: February 22, 2022

/s/ Elizabeth V. Wingfield

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CERTIFICATE OF SERVICE

I hereby certify that on this date, February 22, 2022, I caused the foregoing document to be filed and served on all counsel of record by operation of the CM/ECF system for the United States District Court for the Middle District of Pennsylvania.

DATED: February 22, 2022

/s/ Elizabeth V. Wingfield

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Exhibit A

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

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

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

Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

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

No. _____

the Pennsylvania Bureau of Election Services and Notaries, Respondents.
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PETITION FOR REVIEW
ADDRESSED TO THE COURT’S ORIGINAL JURISDICTION

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

Commonwealth officials in their official capacities.

PARTIES

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

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

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

13. Respondent Veronica Degraffenreid is the Acting Secretary of the

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

II. The 2020 Census is complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A.3d at 1086.

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

CLAIMS FOR RELIEF

COUNT I

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

34. Petitioners reallege and reincorporate by reference all prior paragraphs

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

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

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

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

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

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

COUNT II

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

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

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

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

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

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

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

COUNT III

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

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

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

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

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

COUNT IV

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

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

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

Dated: April 26, 2021

Respectfully submitted,

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

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

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

CERTIFICATE OF COMPLIANCE

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

Submitted by: Edward D. Rogers

Signature: /s/ Edward D. Rogers

Name: Edward D. Rogers

Attorney No.: 69337

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VERIFICATION

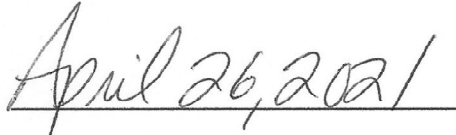
I, Carol Ann Carter, hereby state:

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

Signed:

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

Dated:

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

NOTICE TO PLEAD

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

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

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

Dated: April 26, 2010

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

CERTIFICATE OF SERVICE

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

By Certified Mail:

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

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

Dated: April 26, 2021

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

Exhibit B

IN THE SUPREME COURT OF PENNSYLVANIA

No. 7 MM 2022

**CAROL ANN CARTER *et al.*,
*Petitioners,*****v.****LEIGH M. CHAPMAN, *et al.*,
*Respondents.***

**RESPONDENTS' EXCEPTIONS REGARDING
THE SPECIAL MASTER'S PROPOSED REVISION TO THE
2022 ELECTION CALENDAR/SCHEDULE AND
INCORPORATED BRIEF IN SUPPORT THEREOF**

On Review of the Special Master's Proposed Findings of Fact and
Conclusions of Law, Nos. 464 M.D. 2021 and 465 M.D. 2021 (February 7, 2022)

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Robert A. Wiygul (I.D. No. 310760)

Cary L. Rice (I.D. No. 325227)

John B. Hill (I.D. No. 328340)

One Logan Square, 27th Floor

Philadelphia, PA 19103-6933

(215) 568-6200

OFFICE OF ATTORNEY GENERAL

Caleb Curtis Enerson (I.D. No.
313832)

15th Floor, Strawberry Square

Harrisburg, PA 17120

1600 Arch St., Suite 300

Philadelphia, PA 19103

(717) 787-2717

(additional counsel on signature page)

Respondents, the Acting Secretary of the Commonwealth and Director of the Bureau of Election Services and Notaries, respectfully submit these Exceptions to the Special Master's proposed revision to the 2022 election calendar. In support of these Exceptions, the Respondents submit and attach hereto the Affidavit of Jonathan Marks dated February 14, 2022 ("Marks II Aff.").

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

Although the Special Master's February 7, 2022 Report recommended certain changes to the election calendar for the congressional primary election, the

¹ Respondents note that, although they have not proposed a congressional district plan in this litigation, Intervenor-Respondent Governor Wolf has proposed a plan for judicial adoption.

Report expressly “recognize[d]” that, “in light of the changed circumstances of this litigation prompted by [this] Court’s February 2, 2022 order, granting Petitioners’ Emergency Application for Extraordinary Relief and invoking its extraordinary jurisdiction, ... further and/or different changes to the election calendar ... may be necessary.”² Respondents agree that further changes are necessary and appropriate. In particular, the Special Master’s Report did not address the calendar for the statewide and state legislative elections. For the reasons discussed herein, Respondents respectfully request that this Court address the calendar for all primary elections at this time.

In summary, despite delays in the redistricting process for both congressional and state legislative elections, Respondents believe that it is feasible—and highly preferable—to conduct the primary election for all races on the currently scheduled date of May 17, 2022.

Given recent experience, there appears to be a substantial possibility that a state-court decision moving the date of the primary election for a federal office would be challenged under the Elections Clause, *see* U.S. CONST. art. I, § 4, cl. 1.³

² The Honorable Patricia A. McCullough, Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendation of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar Schedule at 222 (Feb. 7, 2022).

³ In *Pennsylvania Democratic Party v. Boockvar*, 283 A.3d 345 (Pa. 2020), at least one of the parties and counsel to the present proceeding (the “Present Participants”) filed an Elections Clause challenge to this Court’s decision to extend, by only three days, the statutory “received-

Irrespective of the merits and ultimate resolution of such litigation, its pendency would inject uncertainty into an election cycle that is already quite challenging for both election administrators and candidates.

Further, keeping the congressional primary on May 17 but changing the primary date for state legislative offices, *i.e.*, having separate primaries, would likely cause voter confusion, depress voter participation, and cost taxpayers tens of millions of dollars. It would also present county election offices with significant logistical challenges, including the recruitment of poll workers. Respondents believe that the county boards of elections, which are responsible for directly administering elections, would also like to avoid having two separate primary dates.

In Section II.A and B below, Respondents provide a proposed election calendar (one for the statewide and congressional elections, and another for the

by” deadline for mail-in ballots. The Court’s Order was based on its determination that enforcing the statutory deadline in the extraordinary circumstances of the 2020 general election—which took place during the height of the COVID-19 pandemic and was beset for mail delays—would disenfranchise voters in violation of the Pennsylvania Constitution’s Free and Equal Elections Clause. *Id.* at 369. Nonetheless, the Present Participants asked the Supreme Court of the United States to reverse this Court’s Order, contending that the Order violated the Elections Clause. *See* Emergency Application for a Stay Pending the Filing and Disposition of a Petition for a Writ of Certiorari, *Scarnati v. Pa. Democratic Party*, No. 20A53 (U.S. filed Sept. 28, 2020); Emergency Application for a Stay Pending Disposition of a Petition for a Writ of Certiorari, *Pa. Democratic Party v. Boockvar*, No. 20A54 (U.S. filed Sept. 28, 2020); *see also* *Scarnati v. Boockvar*, 141 S. Ct. 644 (U.S.) (denying application to stay this Court’s Order by a 4-4 vote); *Republican Party of Pa. v. Boockvar*, 141 S. Ct. 643 (same).

state legislative election) that would allow the primary election for all races to be held on May 17, 2022.

I. THE CURRENT ELECTION SCHEDULE

The current election schedule stands as follows:

Event	Deadline
The first day before the primary election to circulate and file nomination petitions (<i>see</i> 25 P.S. § 2868).	February 15, 2022
The last day before the primary election to circulate and file nomination petitions (<i>see</i> 25 P.S. § 2868).	March 8, 2022
The first day before the primary election to circulate and file nomination papers (<i>see</i> 25 P.S. § 2913(b)).	March 9, 2022
Deadline to file objections to nomination petitions (<i>see</i> 25 P.S. § 2937).	March 15, 2022
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions (<i>see</i> 25 P.S. § 2937).	March 18, 2022
The last day before the primary election for candidates who filed nomination petitions to withdraw their candidacy (<i>see</i> 25 P.S. § 2874).	March 23, 2022
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions (<i>see</i> 25 P.S. § 2937).	March 23, 2022
The last day before the primary election for the County Board of Elections to send remote military-overseas absentee ballots (<i>see</i> 25 Pa.C.S. § 3508(b)(1)).	March 28, 2022
The last day before the primary election for the County Board of Elections to send all remaining military-overseas absentee ballots (<i>see</i> 25 Pa.C.S. § 3508(a)(1); 52 U.S.C. § 20302(a)(8)(A)).	April 1/2, 2022 ⁴

⁴ Under state law, if this deadline falls on a Saturday, as it does this election cycle, the deadline is moved to the proceeding day. 25 Pa.C.S. § 3508(a)(1). Federal law does not have a similar rule, and the deadline stays the same even if it falls on the weekend. 52 U.S.C. § 20302(a)(8)(A). This means that under state law, the last day before the primary election for the County Board of Elections to send all remaining military-overseas absentee ballots is April 1, while the deadline under federal law is April 2.

Event	Deadline
The last day before the primary election for voters to register (<i>see</i> 25 P.S. § 3071).	May 2, 2022
The last day before the primary election to apply for a mail-in or civilian absentee ballot (<i>see</i> 25 P.S. § 3146.2a(a)).	May 10, 2022
The last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots for the primary election (<i>see</i> 25 P.S. § 3146.6(a)).	May 17, 2022
Pennsylvania's 2022 general primary election (<i>see</i> 25 P.S. § 2753(a)).	May 17, 2022
The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election for the primary election (<i>see</i> 25 Pa.C.S. § 3511(a)).	May 24, 2022

II. PROPOSED MODIFICATIONS TO THE CURRENT ELECTION CALENDAR WITH MAY 17 PRIMARY

A. Proposed Modified Statewide and Congressional Calendar

Through a combination of internal administrative adjustments and Court-ordered date changes, it is possible to hold the statewide and congressional primaries on the scheduled May 17, 2022 date.

The current election schedule gives the Counties ten weeks to prepare for the primary election, between (1) the last date before the primary election for circulating and filing nomination petitions (currently March 8), and (2) the primary election date (May 17). Respondents believe that the Counties could fully prepare for the statewide and congressional primary elections in nine weeks.

To accommodate this slightly compressed schedule, the Court would need to order a period for circulating and filing nomination petitions that lasted two weeks,

instead of three; and the nominations period would need to start on March 1, spanning two weeks and ending on the recommended revised deadline of March 15. The Department and county boards of elections have typically had three weeks of preparation time before the first date for circulating and filing nomination petitions. During this period, the Department would update the Department's Elections and Campaign Finance system, and the counties would update the Statewide Uniform Registry of Electors ("SURE") system, to reflect the new districts.⁵ The Department previously represented that with the addition of staff and increased staff hours, it would be possible for the Department to complete its preparations in two weeks instead of three.⁶ Upon further review, the Department believes that, by using generic nomination petitions,⁷ the Department could complete its preparations for circulating and filing nomination petitions quickly

⁵ See Affidavit of Jonathan Marks ("Marks I Aff.") ¶ 15 (Jan. 28, 2022), which was admitted into evidence at the hearing conducted by the Special Master in this proceeding on January 27-28, 2022.

⁶ See *id.* ¶ 16.

⁷ Ideally, the Department and county boards of elections would have an opportunity, before the circulation and filing of nomination petitions begin, to fully update the Statewide Uniform Registry of Electors (SURE) system with information about the new districts. In that event, the computerized tool used to generate nomination petitions would allow candidates to pre-populate all the information needed on the Candidate's Affidavit, as well as the information needed in the preamble portion of the nomination petition page, based on the specific office the candidate is seeking. By contrast, with generic nomination petitions, candidates running in particular districts must manually fill in the District Number line on the Candidate's Affidavit and the District Number line and County of Signers lines at the top of each nomination petition page. These two lines will be blank when the petition forms are generated and printed. Nonetheless, the computerized tool used to generate the generic nomination petitions will still pre-populate the rest of the information for the candidate's review.

and in only a couple of days, by March 1, 2022. Although the use of generic nomination petitions is less than ideal, *see supra* note 6, it will allow for the election process to proceed in a timely manner, as necessitated under the unusual circumstances of the current election cycle.

Accordingly, if the first date for circulating and filing nomination petitions were moved from February 15 to March 1, the Department would need to have a final congressional plan in place by no later than **February 27, 2022**. However, the Department respectfully requests that the Court issue an Order establishing the calendar deadlines as early as possible, and before February 27, 2022, so that counties, candidates, and the Department have time to prepare for the commencement of petition filing.

The below chart illustrates the modifications proposed to the calendar for the statewide and congressional elections:

Event	Current Deadline for Statewide and Congressional Elections	Proposed Modified Deadline for Statewide and Congressional Elections
First day to circulate and file nomination petitions	February 15, 2022	<u>March 1, 2022</u>
Last day to circulate and file nomination petitions	March 8, 2022 <i>(three-week period for circulating and filing nomination petitions)</i>	<u>March 15, 2022</u> <i>(<u>two-week</u> period for circulating and filing nomination petitions)</i>
First day to circulate and file nomination papers	March 9, 2022	March 16, 2022

Event	Current Deadline for Statewide and Congressional Elections	Proposed Modified Deadline for Statewide and Congressional Elections
Deadline to file objections to nomination petitions	March 15, 2022 <i>(objections must be filed within 7 days)</i>	March 22, 2022
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions	March 18, 2022 <i>(not later than 10 days after the last day for filing nomination petitions)</i>	March 25, 2022
Last day for candidates who filed nomination petitions to withdraw their candidacy	March 23, 2022	[no deadline change]
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions	March 23, 2022 <i>(not later than 15 days after the last day for filing nomination petitions)</i>	March 30, 2022 ⁸
Last day for the County Board of Elections to send remote military-overseas absentee ballots	March 28, 2022	April 2, 2022 ⁹
Last day for the County Board of Elections to send all remaining military-overseas absentee ballots	April 1/2, 2022 ¹⁰	April 2, 2022
Last day for voters to register before the primary election	May 2, 2022	[no deadline change]

⁸ Following this chart, Respondents discuss the need for this Court to modify the 10-day period for appealing from the Commonwealth Court’s decisions resolving objections to nomination petitions.

⁹ See Marks II Aff. ¶ 21. Because the deadline for sending “remote” military-overseas absentee ballots is a function of state law rather than federal law, this Court has the power to move this deadline.

¹⁰ See *supra* note 4.

Event	Current Deadline for Statewide and Congressional Elections	Proposed Modified Deadline for Statewide and Congressional Elections
Last day before the primary election to apply for a mail-in or civilian absentee ballot	May 10, 2022	[no deadline change]
Last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots for the primary election	May 17, 2022	[no deadline change]
Pennsylvania's 2022 general primary election	May 17, 2022 <i>(ten weeks between last date for circulating and filing nomination petitions and primary election)</i>	[no deadline change] <i>(<u>nine weeks</u> between last date for circulating and filing nomination petitions and primary election)</i>
The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election for the primary election	May 24, 2022	[no deadline change]

In conjunction with this proposal, Respondents wish to address a deadline that is not listed on the chart above—namely, the deadline for parties to appeal from the Commonwealth Court's decisions resolving objections to nomination petitions. If the Court adopts the proposal above, the Commonwealth Court decisions will be due by March 30, 2022. Under the Rules of Appellate Procedure, any person aggrieved by such decisions would then have 10 days to appeal to this Court. *See* Pa.R.A.P. 803(c)(1)(ii); *In re Morgan*, 428 A.2d 1055, 1057 (Pa. Commw. Ct. 1981).

This Court has the power to shorten this deadline. *See* Pa.R.A.P. 105(a) (an appellate court may “disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction”); *see also Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711, 721 n.10 (Pa. 2012) (“as it respects the judicial function, the Election’s Code deadlines [for resolving objections to nomination petitions] are understood ... as ‘directory’” rather than mandatory). Respondents respectfully submit that the Court should do so here, and should require aggrieved parties to file any appeals within 3 days of the pertinent Commonwealth Court’s decision.

This shortened deadline is necessary and appropriate to ensure that ballots can be finalized in time for counties to send mail-in and absentee ballots to voters. Under the Election Code, counties must distribute ballots to electors who have applied for them no later than two weeks before the primary—here, May 3, 2022. *See* 25 P.S. § 3150.15. As a practical matter, however, given mail-delivery timelines and the need to process ballot applications submitted after May 3, 2022, counties will want to begin sending ballots at an earlier date. Respondents believe that, to ensure that any nomination-petition appeals can be resolved in sufficient time to finalize the mail-in and absentee ballots, the appeal period should be shortened to 3 days.

B. Proposed Modified Legislative Calendar with May 17 Primary

As the Court is aware, the Legislative Reapportionment Commission (“LRC”) adopted a Final Plan on February 4, 2022. That means that any aggrieved party has until March 7, 2022, to file an appeal. *See* PA. CONST. art. II, § 17(d); Pa.R.A.P. 903 official comment (where, as here, appeal period expires on a Sunday, any aggrieved person has until the following Monday to file an appeal). If this Court were to expedite any briefing¹¹ and argument on the appeals and enter a final ruling on the legislative Final Plan by **March 18, 2022**, the May 17 primary date could (if the Final Plan is determined to be lawful) also remain in place for the state legislative races under the proposed schedule below.

Event	Current Deadline for Legislative Election	Proposed Modified Deadline for Legislative Election
First day to circulate and file nomination petitions	February 15, 2022	March 20, 2022
Last day to circulate and file nomination petitions	March 8, 2022 <i>(three-week period for circulating and filing nomination petitions)</i>	March 29, 2022 <i>(<u>nine-day</u> period for circulating and filing nomination petitions)</i> ¹²

¹¹ This Court may wish to consider issuing an order now requiring that any brief filed in support of an appeal of the LRC’s Final Plan be submitted on or before March 8, 2022, and that the LRC file a response brief on or before March 11, 2022.

¹² In *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992) this Court ordered a nine-day nomination-petition-circulation period for congressional candidates. *See id.* at 244. Notably, candidates for state legislative office require significantly fewer petition signatures than candidates for congressional office. *Compare* 25 P.S. § 2872.1(12) (1,000 signatures required for congressional candidate), *with id.* § 2871.1(13) (500 signatures requires for candidate for

Event	Current Deadline for Legislative Election	Proposed Modified Deadline for Legislative Election
First day to circulate and file nomination papers	March 9, 2022	March 30, 2022
Last day for candidates who filed nomination petitions to withdraw their candidacy	March 23, 2022	March 31, 2022
Last day for the County Board of Elections to send remote military-overseas absentee ballots	March 28, 2022	April 2, 2022 ¹³
Last day for the County Board of Elections to send all remaining military-overseas absentee ballots	April 1/2, 2022 ¹⁴	April 2, 2022
Deadline to file objections to nomination petitions	March 15, 2022 (<i>seven-day period for filing objections to nomination petitions</i>)	April 4, 2022 (<i>six-day period for filing objections to nomination petitions</i>) ¹⁵
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions	March 18, 2022 (<i>not later than 10 days after the last day for filing nomination petitions</i>)	April 7, 2022 (<i>not later than nine days after the last day for filing the nomination petitions</i>) ¹⁶

Pennsylvania Senate), and *id.* § 2871.14 (300 signatures required for candidate for Pennsylvania House of Representatives).

¹³ See Marks II Aff. ¶ 21.

¹⁴ See *supra* note 4.

¹⁵ This Court ordered a six-day objection period in *Mellow v. Mitchell*. See 706 A.2d at 244.

¹⁶ This Court may alter the deadlines governing the Commonwealth Court’s resolution of objections to nomination petitions. See *Holt*, 38 A.3d at 721 n.10 (“as it respects the judicial function, the Election’s Code deadlines [for resolving objections to nomination petitions] are understood ... as ‘directory’” rather than mandatory); *In re Bruno*, 101 A.3d 635, 678 (Pa. 2014) (“[t]he Supreme Court’s supervisory power over the Unified Judicial System is beyond question” and includes “authority ... over inferior tribunals”).

Event	Current Deadline for Legislative Election	Proposed Modified Deadline for Legislative Election
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions	March 23, 2022 <i>(not later than 15 days after the last day for filing nomination petitions)</i>	April 12, 2022 <i>(not later than <u>14</u> days after the last day for filing nomination petitions)¹⁷</i>
Last day for voters to register before the primary election	May 2, 2022	[no deadline change]
Last day to apply for a mail-in or civilian absentee ballot	May 10, 2022	[no deadline change]
Last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots	May 17, 2022	[no deadline change]
Pennsylvania's 2022 primary election	May 17, 2022 <i>(ten weeks between last date for circulating and filing nomination petitions and primary election)</i>	[no deadline change] <i>(<u>seven weeks</u> between last date for circulating and filing nomination petitions and primary election)</i>
The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election for the primary election	May 24, 2022	[no deadline change]

For the reasons discussed above, *see supra* pages 9-10, Respondents respectfully request that the Court shorten to 3 days the period for appealing from the Commonwealth Court's decisions resolving objections to nomination petitions.

The Department will, of course, make every effort to comply with any schedule that the Court puts in place. To the extent the Court deems it necessary or

¹⁷ *See supra* note 16.

appropriate, Respondents stand ready to provide testimony regarding appropriate and feasible changes to the 2022 primary election calendar, and to assist the Court in determining workable alternatives to the calendars proposed above.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: February 14, 2022

By: /s/ Robert A Wiygul
Robert A. Wiygul (I.D. No. 310760)
Cary L. Rice (I.D. No. 325227)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300

OFFICE OF ATTORNEY GENERAL
Caleb Curtis Enerson (I.D. No. 313832)
15th Floor, Strawberry Square
Harrisburg, PA 17120
1600 Arch St., Suite 300
Philadelphia, PA 19103
(717) 787-2717

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

Counsel for Respondents

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

Dated: February 14, 2022

/s/ Robert A. Wiygul
Robert A. Wiygul

IN THE SUPREME COURT OF PENNSYLVANIA

CAROL ANN CARTER; et al.,

Petitioners,

v.

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

Respondents.

No. 7 MM 2022

PHILIP T. GRESSMAN; et al.,

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.

AFFIDAVIT OF JONATHAN MARKS

Jonathan Marks, being duly sworn, deposes and says:

1. I am the Deputy Secretary for Elections and Commissions for the Commonwealth's Department of State (the "Department").
2. I was appointed to the position of Deputy Secretary for Elections and Commissions in February 2019.

3. I have been with the Department since 1993.

4. Prior to being appointed Deputy Secretary for Elections and Commissions in 2019, I served as Commissioner of the Bureau of Commissions, Elections and Legislation (the “Bureau”) starting in October 2011.

5. From 2008 to 2011, I served as the Chief of the Division of the Statewide Uniform Registry of Electors.

6. Prior to that, from 2004 to 2008, I served as the Chief of the Division of Elections and Precinct Data with the Bureau.

7. In my current role, I am responsible for overseeing the day-to-day operations of election administration within the Department.

8. Since I became the Commissioner of the Bureau in 2011, I have supervised the administration of the Department’s duties in more than 20 regularly-scheduled elections and over 50 special elections.

9. The next primary for all offices—statewide, congressional, and state legislative—is scheduled for May 17, 2022.

10. The current timeline of deadlines leading up to and related to the May 17, 2022 primary is as follows:

- a. The first day before the primary election to circulate and file nomination petitions is February 15, 2022. (*See* 25 P.S. § 2868.)
- b. The last day before the primary election to circulate and file

nomination petitions is March 8, 2022. (*See* 25 P.S. § 2868.)

- c. The first day before the primary election to circulate and file nomination papers is March 9, 2022. (*See* 25 P.S. § 2913(b).)
- d. The Deadline to file objections to nomination petitions is March 15, 2022. (*See* 25 P.S. § 2937.)
- e. The last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions is March 18, 2022. (*See* P.S. § 2937.)
- f. The last day before the primary election for candidates who filed nomination petitions to withdraw their candidacy is March 23, 2022. (*See* 25 P.S. § 2874.)
- g. The last day for the Commonwealth Court to render decisions involving objections to nomination petitions is March 23, 2022. (*See* 25 P.S. § 2937.)
- h. The last day before the primary election for the County Boards of Elections to send remote military-overseas absentee ballots is March 28, 2022. (*See* 25 Pa.C.S. § 3508(b)(1).)
- i. The last day before the primary election for the County Boards of Elections to send all remaining military-overseas absentee ballots is

April 1, 2022, under state law, *see* 25 Pa.C.S. § 3508(a)(1), and April 2, 2022, under federal law, *see* 52 U.S.C. § 20302(a)(8)(A).¹

- j. The last day before the primary election for voters to register is May 2, 2022. (*See* 25 P.S. § 3071.)
 - k. The last day before the primary election to apply for a mail-in or civilian absentee ballot is May 10, 2022. (*See* 25 P.S. § 3146.2a(a).)
 - l. The last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots for the primary election is May 17, 2022. (*See* 25 P.S. § 3146.6(a).)
 - m. Pennsylvania's 2022 general primary election is scheduled for May 17, 2022. (*See* 25 P.S. § 2753(a).)
 - n. The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election is May 24, 2022. (*See* 25 Pa.C.S. § 3511(a).)
11. All of the deadlines set forth above are required by federal or state law.

¹ As a practical matter, the majority of these military-overseas ballots would typically be sent out on Friday, April 1, 2022. County officials would then process any additional military-overseas ballot requests arriving on the 45th day, sending those ballots out on Saturday, April 2, 2022.

12. The current elections schedule gives the Counties ten weeks to prepare for the primary election, between (a) the last date before the primary election for circulating and filing nomination petitions (currently March 8); and (b) the primary election date (May 17).

13. Based on my experience, the Counties could fully prepare for the statewide and congressional primary election in nine weeks.

14. In order to accomplish this, the Court would need to order a time period for circulating and filing nomination petitions that lasted two weeks, instead of three; and the nominations period would need to start on March 1, spanning two weeks and ending on the recommended revised deadline of March 15.

15. Ideally, the Department and county boards of elections would have an opportunity, before the circulation and filing of nomination petitions begin, to fully update the Statewide Uniform Registry of Electors (SURE) system with information about the new districts. In that event, the computerized tool used to generate nomination petitions would allow candidates to pre-populate all the information needed on the Candidate's Affidavit, as well as the information needed in the preamble portion of the nomination petition page, based on the specific office the candidate is seeking. By contrast, with generic nomination petitions, candidates running in particular districts must manually fill in the District Number line on the Candidate's Affidavit and the District Number line and County of

Signers lines at the top of each nomination petition page. These two lines will be blank when the petition forms are generated and printed. Nonetheless, the computerized tool used to generate the generic nomination petitions will still pre-populate the rest of the information for the candidate's review.

16. The Department believes that, by using generic nomination petitions, the Department could complete its preparations for circulating and filing nomination petitions quickly and in only a couple of days, by March 1, 2022.

17. Although the use of generic nomination petitions is less than ideal, it will allow the election process to proceed in a timely manner, as necessitated under the unusual circumstances of the current election cycle.

18. If the first date for circulating and filing nomination petitions for statewide and congressional races were moved from February 15 to March 1, the Department would need to have a final congressional plan in place by no later than **February 27, 2022**.

19. The Legislative Reapportionment Commission ("LRC") adopted a Final Plan for the legislative districts on February 4, 2022. If this Court were to expedite any briefing and argument on the appeals and enter a final ruling on the legislative Final Plan by **March 18, 2022**, the May 17 primary date could (if the Final Plan is determined to be lawful) also remain in place for the state legislative races.

20. The Court would also need to order a period for circulating and filing nomination petitions that lasted nine days, instead of three weeks; and the nominations period would need to start on March 20, spanning nine days and ending on the recommended revised deadline of March 29.

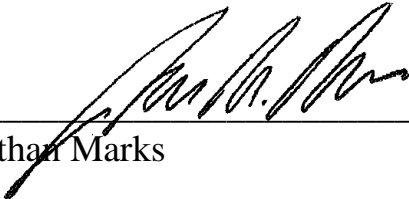
21. Finally, the Court would need to adjust the date by which the County Boards of Elections must send remote military-overseas absentee ballots from March 28, 2022 to April 2, 2022, to allow time for the Secretary to conduct the lottery to determine the position of candidate names and order in which the names will appear on the primary ballot before the remote military-overseas absentee ballots must go out. For administrative efficiencies and to align the calendars as much as possible, it would be preferable to have April 2, 2022, as the deadline for this task under the congressional calendar as well.

22. Having separate primaries would likely cause voter confusion, depress voter participation, and cost taxpayers tens of millions of dollars, and would present county election offices with significant logistical challenges, including the recruitment of poll workers.

23. Should the Court modify existing deadlines, the Department will make every effort to comply with any schedule that the Court puts in place.

The foregoing is true and correct to the best of my knowledge, information, and belief and is subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: February 14, 2022



Jonathan Marks

Exhibit C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

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/Appellants.

No. 464 MD 2021

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.

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/Appellants.

No. 465 MD 2021

[PROPOSED] ORDER

AND NOW, this _____ day of January, 2022, upon consideration of the Application for Leave to Intervene of Tom Wolf, Governor of the Commonwealth of Pennsylvania (“Application”), and any response thereto, it is hereby ORDERED that the Application is GRANTED.

IT IS FURTHER ORDERED that Governor Wolf shall be allowed to participate in these consolidated actions as a respondent.

BY THE COURT:

J.

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

*Counsel for Proposed Intervenor Tom
Wolf, Governor of the Commonwealth
of Pennsylvania*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

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

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Respondents/Appellants.

**APPLICATION FOR LEAVE TO INTERVENE OF
TOM WOLF, GOVERNOR OF THE COMMONWEALTH OF
PENNSYLVANIA**

Pursuant to Pennsylvania Rules of Appellate Procedure 106 and 1531(b) and Pennsylvania Rules of Civil Procedure 2326-29, Tom Wolf, Governor of the Commonwealth of Pennsylvania, hereby files this Application for Leave to Intervene in the consolidated cases pending in the Commonwealth Court at docket numbers 464 MD 2021 and 465 MD 2021, respectively entitled *Carter v. Degraffenreid* and *Gressman v. Degraffenreid* (the “Consolidated Actions”).

In support of the Application, Governor Wolf respectfully states as follows:

1. As a result of population changes, Pennsylvania’s congressional district map no longer conforms to the requirements of the Pennsylvania Constitution, *see* Pa. Const. art. I, § 5, the United States Constitution, *see* U.S. Const. art. I, § 2, or federal law, *see* 2 U.S.C. § 2c.
2. Accordingly, Pennsylvania must have a new congressional district map, but the hour for adoption of such a map is growing late. The Department of State and county boards of elections have historically needed approximately three weeks to prepare the Statewide Uniform Registry of Electors (“SURE”) to facilitate the nomination petition process, which is statutorily mandated to begin on February 15, 2022. *See* 25 P.S. § 2868. It is therefore imperative that Pennsylvania’s new congressional district map goes into effect very soon.
3. In the ordinary course of events, Pennsylvania’s congressional districts “are drawn by the state legislature as a regular statute, subject to veto by

the Governor.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 742 (Pa. 2018).

4. Petitioners in the Consolidated Actions, however, contend that because the General Assembly has not yet passed a map, the Court must step in to adopt Pennsylvania’s new congressional district plan.

5. Governor Wolf is entitled to intervene as a respondent in the Consolidated Actions on at least two different grounds.

6. First, Governor Wolf could have been joined as an original party in the Consolidated Actions. *See* Pa. R. Civ. P. 2327(3).

7. Governor Wolf was joined as a respondent in *League of Women Voters*, the most recent prior case in which Pennsylvania courts were asked to adopt a new congressional district plan. The Governor actively participated in the litigation, vigorously advocating for the principles he believed should guide the redistricting process, crafting and submitting his own proposed redistricting plan, and critiquing maps proposed by other litigants. *See, e.g.*, Statement of Respondent Thomas W. Wolf in Support of His Proposed Remedial Congressional Map Pursuant to Court’s Orders of January 22 and January 26, 2018 (filed Feb. 15, 2018), No. 159 MM 2017, *League of Women Voters of Pa. v. Commonwealth* (Pa. Sup. Ct.).

8. Second, by virtue of his constitutional role in the redistricting process, the Governor has a “legally enforceable interest” in litigation seeking a court-ordered redistricting plan.

9. The Governor has the constitutional authority to approve or veto a congressional district map. *See* Pa. Const. art. IV, § 15; *League of Women Voters*, 178 A.3d at 742; *see also Brouillette v. Wolf*, 213 A.3d 341, 360 (Pa. Commw. Ct. 2019) (“The Governor’s powers include his power to veto legislation to the extent that this power is vested in him by Sections 15 and 16 of Article IV.”).

10. Further, the Governor’s approval power over a congressional district map demonstrates that the Governor has an enforceable interest not only in ultimately deciding whether or not Pennsylvania will enact a particular map, but also in giving input into the reapportionment process.

11. This Court has recognized these types of interests on multiple occasions. *See Allegheny Reprod. Health Ctr. v. Pa. Dept. of Human Servs.*, 225 A.3d 902, 913 (Pa. Commw. 2020) (permitting intervention by group of legislators seeking to preserve interest in “constitutional authority” to participate in legislative process); Memorandum Opinion at 12, *Carter v. Degraffenreid*, No. 132 MD 2021 (Pa. Commw. Ct. Sept. 2, 2021) (*Carter I*) (granting four individual legislators leave to intervene in a previous version of this redistricting litigation to preserve

interests in (1) their ability to legislate and (2) the submission of a proposed plan for the Court's consideration).

12. In sum, the Governor is the only person in Pennsylvania who, as an individual, has a constitutionally prescribed role in the selection of a congressional district plan, and he is the only person with any constitutionally prescribed role in legislative redistricting who is elected by *all* Pennsylvania voters. Given this unique role, the Court should grant Governor Wolf leave to intervene so that he can defend the interests of all Pennsylvania citizens in the redistricting process.

13. In support of this Application, Governor Wolf is contemporaneously filing (1) a Memorandum of Law, which is incorporated herein by reference (2) Proposed Answers to the Petitions for Review in the Consolidated Actions (Exhibits A and B hereto), (3) a Verification affirming the truth of the facts set forth in this Application, and (4) a Proposed Order.

14. For the foregoing reasons, and as set forth more fully in the accompanying Memorandum of Law, the Court should grant Governor Wolf's Application for Leave to Intervene.

WHEREFORE, Governor Wolf respectfully requests that the Court grant the Application for Leave to Intervene and allow him to intervene as a Respondent in the Consolidated Actions.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: December 31, 2021

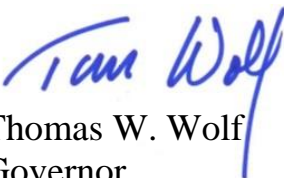
By: /s/ Robert A. Wiygul
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300

*Counsel for Proposed Intervenor Tom Wolf,
Governor of the Commonwealth of
Pennsylvania*

VERIFICATION

I, Thomas W. Wolf, Governor of the Commonwealth of Pennsylvania, verify that the facts set forth in the foregoing Application for Leave to Intervene are true and correct to the best of my information, knowledge and belief. I understand that the statements contained herein are subject to the penalties of 18 P.S. § 4904 relating to unsworn falsification to authorities.

Dated: December 30, 2021


Thomas W. Wolf
Governor
Commonwealth of Pennsylvania

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

*Counsel for Proposed Intervenor Tom
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Respondents/Appellants.

No. 464 MD 2021

PHILIP T. GRESSMAN; RON Y. DONAGI;
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AMY MYERS; EUGENE BOMAN; GARY GORDON;
LIZ MCMAHON; TIMOTHY G. FEEMAN; and
GARTH ISAAK,

No. 465 MD 2021

Petitioners,

v.

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

Respondents/Appellants.

**MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR LEAVE TO INTERVENE OF
TOM WOLF, GOVERNOR OF THE COMMONWEALTH OF
PENNSYLVANIA**

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Tom Wolf, Governor of the Commonwealth of Pennsylvania, hereby files this Memorandum of Law in support of his Application for Leave to Intervene in the consolidated cases pending in the Commonwealth Court at docket numbers 464 MD 2021 and 465 MD 2021, respectively entitled *Carter v. Degraffenreid* and *Gressman v. Degraffenreid* (the “Consolidated Actions”).

I. INTRODUCTION

Pennsylvania’s redistricting process is enormously consequential. Properly drawn congressional districts will ensure that all Pennsylvanians receive equal and fair representation in the United States House of Representatives, that communities of interest are respected and maintained, and that it is the voters who choose their elected representatives—rather than, as has been true all too often in Pennsylvania’s history, the elected representatives choosing their voters.

It is not disputed that, as a result of population changes, Pennsylvania’s congressional district map no longer conforms to the requirements of the Pennsylvania Constitution, *see* Pa. Const. art. I, § 5, the United States Constitution, *see* U.S. Const. art. I, § 2, or federal law, *see* 2 U.S.C. § 2c. Accordingly, Pennsylvania must have a new congressional district map, but the hour for adoption of such a map is growing late. The Department of State and county boards of elections have historically needed approximately three weeks to prepare the Statewide Uniform Registry of Electors (“SURE”) to facilitate the nomination

petition process, which is statutorily mandated to begin on February 15, 2022. *See* 25 P.S. § 2868. It is therefore imperative that Pennsylvania’s new congressional district map goes into effect very soon.

In the ordinary course of events, Pennsylvania’s congressional districts “are drawn by the state legislature as a regular statute, subject to veto by the Governor.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 742 (Pa. 2018).

Petitioners in the Consolidated Actions, however, contend that because the General Assembly has not yet passed a map, the Court must step in to adopt Pennsylvania’s new congressional district plan.

Governor Wolf is entitled to intervene as a respondent in the Consolidated Actions on at least two different grounds. First, Governor Wolf could have been joined as an original party in the Consolidated Actions. *See* Pa. R. Civ. P. 2327(3). Indeed, Governor Wolf *was* joined as a respondent in *League of Women Voters*, the most recent prior case in which Pennsylvania courts were asked to adopt a new congressional district plan. Second, by virtue of his constitutional role in the redistricting process, the Governor has a “legally enforceable interest” in litigation seeking a court-ordered redistricting plan.

In sum, the Governor is the only person in Pennsylvania who, as an individual, has a constitutionally prescribed role in the selection of a congressional district plan, and he is the only person with any constitutionally prescribed role in

legislative redistricting who is elected by *all* Pennsylvania voters. Given this unique role, the Court should grant Governor Wolf leave to intervene so that he can defend the interests of all Pennsylvania citizens in the redistricting process.

II. GOVERNOR WOLF IS ENTITLED TO INTERVENE AS OF RIGHT

Pennsylvania Rule 2327 provides that a person “not a party” to an action “*shall* be permitted to intervene” in certain enumerated circumstances, Pa. R. Civ. P. 2327 (emphasis added), including when (1) the joining party “could have joined as an original party in the action or could have been joined therein[.]” Pa. R. Civ. P. 2327(3); or (2) determination of an action “may affect any legally enforceable interest” of the joining party, Pa. R. Civ. P. 2327(4). Rule 2329, in turn, provides that, with limited exceptions, after a person files a petition for leave to intervene, “the court, if the allegations of the petition have been established and are found to be sufficient, *shall* enter an order allowing intervention[.]” Pa. R. Civ. P. 2329 (emphasis added). “Considering Rules 2327 and 2329 together, the effect of Rule 2329 is that if the petitioner is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory, not discretionary, unless one of the grounds for refusal under Rule 2329 is present.” *Larock v. Sugarloaf Tp. Zoning Hrg. Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999); *accord In re Pa. Crime Comm.*, 309 A.2d 401, 408 n.11 (Pa. 1973) (same). Governor Wolf satisfies each of the independent grounds for intervention described in Rule 2327(3) and

(4), and none of the exceptions discussed in Rule 2329 are present. Accordingly, the Court should grant the Governor's Application for Leave to Intervene.

A. Intervention Is Proper Under Rule 2327(3) Because Governor Wolf Could Have Been Joined in the Consolidated Actions as an Original Respondent

Petitioners in the Consolidated Actions could have joined Governor Wolf as a respondent. In *League of Women Voters of Pennsylvania v. Commonwealth*, the last time a set of petitioners challenged Pennsylvania's congressional district map and sought judicial reapportionment, Governor Wolf was named as a respondent in the action. 178 A.3d at 741. Indeed, the Governor actively participated in the litigation, vigorously advocating for the principles he believed should guide the redistricting process, crafting and submitting his own proposed redistricting plan, and critiquing maps proposed by other litigants. *See, e.g.*, Statement of Respondent Thomas W. Wolf in Support of His Proposed Remedial Congressional Map Pursuant to Court's Orders of January 22 and January 26, 2018 (filed Feb. 15, 2018), No. 159 MM 2017, *League of Women Voters of Pa. v. Commonwealth* (Pa. Sup. Ct.). Given that both *League of Women Voters* and the Consolidated Actions involve challenges to Pennsylvania's congressional district plan and a request that the judiciary assume responsibility for adopting a lawful map, Governor Wolf's presence as a defendant in the former case confirms that he could have been joined

as an original party to the present Consolidated Actions.¹ Under Rule 2327(3), that alone is sufficient to demonstrate an entitlement to intervention. The Court need go no further.

B. Intervention Is Proper Under Rule 2327(4) Because a Grant of the Relief Sought Will Affect Governor Wolf’s Legally Enforceable Interest in Congressional Reapportionment

Governor Wolf has at least two legally enforceable interests in congressional redistricting. First, Governor Wolf has a legally enforceable and constitutionally mandated interest in the process by which a congressional district map is adopted. As the Supreme Court stated in *League of Women Voters*, in Pennsylvania, congressional districts “are drawn by the state legislature as a regular statute, subject to veto by the Governor.” 178 A.3d at 742; *see* Pa. Const. art. IV, § 15; *see also Brouillette v. Wolf*, 213 A.3d 341, 360 (Pa. Commw. Ct. 2019) (“The Governor’s powers include his power to veto legislation to the extent that this power is vested in him by Sections 15 and 16 of Article IV.” (quotation and citation omitted)). Here, Petitioners effectively ask this Court to declare that the time for legislative redistricting has expired, and to step into the place of the

¹ *Accord, e.g., Favors v. Cuomo*, No. 11-5632, 2012 WL 928216 (E.D.N.Y. Mar. 12, 2012) (New York Governor named as defendant in “impasse” litigation regarding congressional redistricting); *Colleton Cnty. Council v. McConnell*, 201 F. Supp. 2d 618 (D.S.C. 2002) (South Carolina Governor named as defendant in “impasse” litigation regarding congressional redistricting and allowed to intervene in related action); *Beavidez v. Eu*, 34 F.3d 825 (9th Cir. 1994) (California governor named as defendant in redistricting suit); *Smith v. Clark*, 189 F. Supp. 2d 503 (S.D. Miss. 2002) (Mississippi Governor named as defendant in redistricting suit).

political branches by adopting a new district map by judicial order. This requested relief unquestionably implicates the Governor’s constitutional interest and role in approving or disapproving a congressional district map, and intervention is therefore appropriate under Rule 2327(4).

To be sure, the Governor does not dispute that the passage of time may make it necessary and appropriate for the judiciary to adopt a map. *See, e.g., Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992); *see also Growe v. Emison*, 507 U.S. 25, 33 (1993) (“The power of the judiciary of a State ... to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.” (quoting *Scott v. Germano*, 381 U.S. 407, 409 (1965))). But that does not change the fact that the Governor has, by virtue of his office and role in the legislative process, a fundamental and legally enforceable interest in a lawsuit that seeks, in effect, to transfer a legislative responsibility to the courts. Indeed, among other things, the Governor has an interest in the determination of *when* exactly the legislative process will have failed, making issuance of a judicial map appropriate. Under the Rules of Civil Procedure, the Governor is entitled to protect this interest.

This Court has granted leave to intervene in circumstances that were similar—albeit where the intervenors had a *less obvious constitutional interest* in the litigation than the Governor has here. In *Allegheny Reproductive Health*

Center. v. Pennsylvania Department of Human Services, 225 A.3d 902 (Pa. Commw. Ct. 2020), this Court granted leave to intervene to 18 members of the Pennsylvania State Senate and eight members of the Pennsylvania House of Representatives because the proposed intervenors sought to “preserve their authority to propose and vote on funding legislation in the future. The constitutional authority of the members of the General Assembly to control the Commonwealth’s finances constitutes a legally enforceable interest that entitles them to intervene and be heard before the Court rules in this matter.” *Id.* at 913 (emphasis added); *see also* Memorandum Opinion at 12, *Carter v. Degraffenreid*, No. 132 MD 2021 (Pa. Commw. Ct. Sept. 2, 2021) (Wojcik, J.) (*Carter I*) (granting four individual legislators leave to intervene in a previous version of this redistricting litigation and observing 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”). In *Allegheny Reproductive Health Center*, however, the intervenors were some, but not all, of the members of the General Assembly. The intervenors therefore only represented their own individual interests in voting on legislation. Here, conversely, Governor Wolf and Governor Wolf alone has the power to approve and veto legislation, including a congressional district map. *See* Pa. Const. art. IV, § 15; *League of Women Voters*, 178 A.3d at 742. In other words,

the individual legislators who were granted leave to intervene in *Allegheny Reproductive Health Center* represented only a fraction of the Legislative Branch, but the Governor acts on behalf of the *entire* Executive Branch. Consequently, Governor Wolf’s “constitutional authority” is an even stronger legally enforceable interest than that held to warrant intervention in *Allegheny Reproductive Health Center*. 225 A.3d at 913.

Second, the Governor’s approval power over a congressional district map demonstrates that the Governor has an enforceable interest not only in ultimately *deciding* whether or not Pennsylvania will enact a particular map, but also in giving *input* into the reapportionment process. Through his Redistricting Advisory Council, the Governor has laid out the principles that will guide his review of any map that the General Assembly passes. *See* Redistricting Principles, Pennsylvania Redistricting Advisory Council (Nov. 24, 2021), <https://www.governor.pa.gov/wp-content/uploads/2021/11/Redistricting-Advisory-Council-Final-Principles.pdf>. The Governor has also provided public feedback on a map currently under consideration in the Pennsylvania House of Representatives. *See* Letter from Governor Tom Wolf to Speaker and Majority Leader of Pennsylvania House of Representatives (Dec. 28, 2021), <https://www.governor.pa.gov/wp-content/uploads/2021/12/28.21-TWW-Cutler-Benninghoff-HB-2146-Final.pdf>. Should the Court ultimately conclude that there is a legislative impasse, the

Governor must be permitted to intervene to advocate for the principles that he would otherwise apply in the legislative process.

This Court recognized this type of enforceable interest earlier this year, in a previous lawsuit filed by the same Carter Petitioners and seeking similar relief. *See Carter I*, No. 132 MD 2021 (Pa. Commw. Ct. 2021). In *Carter I*, the Court permitted intervention by two members of the Pennsylvania House of Representatives and two members of the Pennsylvania Senate. *See Memorandum Opinion, Carter I*, No. 132 MD 2021 (Pa. Commw. Ct. Sept. 2, 2021) (unpublished opinion granting individual legislators’ application for leave to intervene). The Court reasoned that the 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.” *Id.* at 12. The same is even truer of Governor Wolf because, as noted above, (1) the General Assembly and Governor have complementary roles in redistricting, with approval of both required to enact a congressional district map, and (2) unlike the handful of legislators who intervened in *Carter I*, who did not represent the interest of the General Assembly as a whole, the Governor represents the Executive Branch’s entire institutional interest in the reapportionment process.

C. None of the Exceptions to Intervention Applies Here

Rule 2329 provides three limited circumstances in which intervention may not be appropriate,² none of which applies here. First, Governor Wolf’s intervention will be “in subordination to and in recognition of the propriety of the action.” Pa. R. Civ. P. 2329(1). For example, this case is already pending in the Commonwealth Court, so Governor Wolf’s intervention does not affect the Court’s jurisdiction. *Cf. J. Edward Connelly Associates, Inc. v. Landmark Sav. Ass’n*, 35 Pa. D. & C.3d 322, 325 (Pa. Com. Pl. 1985) (denying intervention under Rule 2329(1) because “the department [of banking]’s intervention would deprive the court of common pleas of jurisdiction since, as an agency of the Commonwealth, the department can be sued only in Commonwealth Court”). Nor does Governor Wolf’s intervention otherwise implicate the exception in Rule 2329(1).

Second, Governor Wolf’s interests are not “already adequately represented” in this litigation. Pa. R. Civ. P. 2329(2). The Governor’s interests in the Consolidated Actions are unique to his elected office. First, no other party in the litigation—and, indeed, no one else in the Commonwealth—shares the Governor’s authority to approve or veto a proposed congressional district map. *See* Pa. Const. art. IV § 15; *League of Women Voters*, 178 A.3d at 742. Although the Department

² Even if the Court determined that one of the items in Rule 2329 were applicable, the Rule “does not bar the court from granting intervention.” *Moyer v. Gudknecht*, 67 A.3d 71, 79 (Pa. Commw. Ct. 2013).

of State is an executive agency and two of its leaders are named as Respondents, the Department of State's interest is in election administration. It does not share the Governor's interest in the determination of whether, and at what point in time, the judiciary should conclude that the political branches (which, of course, include the Governor) have "failed" to redistrict in a timely manner, and should thus step into their place to issue a court-ordered map. Nor does the Department of State share the Governor's interest in *which particular map* the Court should adopt (other than to the extent that issues of administrative feasibility might be implicated). Indeed, the Governor's interest is unique among all of the parties to this case.³ The Governor is the only party elected to represent the political interests of all Pennsylvanians.

Third, Governor Wolf has not "unduly delayed in making application for intervention," and his intervention will not "unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties." Pa. R. Civ. P. 2329(3). Governor Wolf files this Application in accordance with the Court's Scheduling Order, and his intervention will not implicate any of the other concerns identified

³ The Governor's Redistricting Advisory Council and the attendant principles for his review of any congressional district map, *see supra* p. 8, further demonstrate that the Governor's views and role in reapportionment are unique and not already represented in the Consolidated Actions.

in this provision. Instead, Governor Wolf's participation in the Consolidated Actions will benefit the court's adjudication.

III. CONCLUSION

For the foregoing reasons, the Court should grant Governor Wolf's Application for Leave to Intervene.

Respectfully submitted,

Dated: December 31, 2021

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

By: /s/ Robert A. Wiygul
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300

*Counsel for Proposed Intervenor Tom Wolf,
Governor of the Commonwealth of
Pennsylvania*

Exhibit A

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

*Counsel for Intervenor-Respondent Tom
Wolf, Governor of the Commonwealth
of Pennsylvania*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

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

Respondents.

No. 464 MD 2021

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,

No. 465 MD 2021

Petitioners,

v.

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

Respondents.

**INTERVENOR-RESPONDENT GOVERNOR WOLF’S ANSWER TO
CARTER PETITIONERS’ PETITION FOR REVIEW
ADDRESSED TO THE COURT’S ORIGINAL JURISDICTION**

Intervenor-Respondent Tom Wolf, in his official capacity as Governor of the Commonwealth of Pennsylvania (the “Governor”), hereby answers the Petition for Review Addressed to the Court’s Original Jurisdiction in case no. 464 MD 2021 as follows:

1. The allegations of this paragraph characterize Petitioners’ filings in this action. Those filings speak for themselves, and any characterization thereof is denied.
2. It is admitted that the U.S. Secretary of Commerce delivered the Census data in August 2020 and that Pennsylvania will be allocated 17 members in Congress in the next Congress, which is one fewer than its current allocation. The remaining allegations of this paragraph constitute conclusions of law to which no response is required.

3. The allegations of this paragraph constitute conclusions of law to which no response is required.

4. It is admitted that this paragraph accurately quotes a portion of the opinion of the Supreme Court of Pennsylvania in *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018). That opinion speaks for itself, and any characterization thereof is denied. The allegation that “[i]t is now clear that Pennsylvania’s political branches will not timely act to pass a [congressional redistricting] plan” is denied. By way of further answer, although it is still possible for a new redistricting map to be legislatively enacted on a timeline compatible with the primary election calendar, that prospect is in substantial doubt given, among other things, the current status of the General Assembly’s consideration of potential maps, the fact that both chambers of the General Assembly are currently adjourned, and the paucity of sessions days scheduled by the House of Representatives and Senate in January 2022. The Governor agrees that, if a new redistricting plan is not legislatively enacted in the near future, it will be necessary and appropriate for the judiciary to implement a plan, and that the judiciary should begin preparing for that eventuality now. The remaining allegations of this paragraph constitute conclusions of law to which no response is required.

5. Denied as stated. By way of further answer, it is admitted that the General Assembly has not yet passed a plan for the Governor’s approval. It is also

admitted that the Governor convened a Pennsylvania Redistricting Advisory Council (the “Redistricting Council”), made up of members with expertise in redistricting, political science and mapmaking, to establish a set of principles to help guide the Governor’s review of maps considered and ultimately passed by the General Assembly, and that the Governor has stated that the redistricting map passed by the House State Government Committee on December 15, 2021, by a 14-11 vote, does not comply with the principles outlined by the Redistricting Council.

6. Admitted in part and denied in part. It is admitted that the General Assembly has adjourned until January and has not passed a congressional redistricting plan, and that a new redistricting plan will therefore not be enacted by the end of December 2021. To the extent the allegations of this paragraph characterize previous written statements of the Department of State or its officials, those statements speak for themselves, and the Governor denies any characterization thereof. By way of further answer, the Governor incorporates by reference his answer to Paragraph 4 above.

7. The facts and circumstances of *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), and *League of Women Voters of Pennsylvania v. Commonwealth*, 181 A.3d 1083 (Pa. 2018) are set forth in the Court’s opinions. Those opinions speak for themselves, and the Governor denies any characterization thereof. The remaining

allegations of this paragraph constitute conclusions of law to which no response is required.

8. The allegations of this paragraph constitute conclusions of law to which no response is required.

9. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

10. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them. The remaining allegations of this paragraph constitute legal conclusions to which no response is required.

11. It is admitted that Respondent Veronica Degraffenreid is the Acting Secretary of the Commonwealth and sued in her official capacity only. It is also admitted that Respondent Degraffenreid is Pennsylvania's Chief Election Official and a member of the Governor's Executive Board. The remaining allegations of this paragraph constitute legal conclusions to which no response is required.

12. It is admitted that Respondent Jessica Mathis is the Director of the Bureau of Elections and Notaries, which is part of the Pennsylvania Department of State, and that Respondent Mathis is sued in her official capacity only. The

remaining allegations of this paragraph constitute legal conclusions to which no response is required.

13. Admitted.

14. Admitted.

15. Denied as stated. It is admitted that, in the *League of Women Voters* litigation, the Supreme Court provided the General Assembly and the Governor an opportunity to enact a lawful map after the Court invalidated the map enacted in 2011, and that the General Assembly then failed to pass such a map by the deadline set forth by the Court. It is further admitted that, following this failure to enact a lawful map, the Court adopted a lawful map.

16. It is admitted that the Court made use of 2010 Census data in drawing a new map. After reasonable investigation, the Governor is without knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations in this paragraph and therefore denies them. To the extent the allegations of this paragraph characterize one or more judicial opinions in the *League of Women Voters* litigation, those opinions are in writing and speak for themselves, and the Governor denies any characterization thereof.

17. Admitted in part and denied in part. The allegation that the “ideal population” of each of Pennsylvania’s congressional districts in 2010 was 705,688

is denied as vague. It is admitted that, according to the 2010 Census, Pennsylvania had a population of 12,702,379, and that, based on that data, the state's total population divided by the number of districts allocated to Pennsylvania following that Census, rounded to the nearest whole number, was 705,688.

18. It is admitted that the Court-drawn map in *League of Women Voters* was adopted on February 19, 2018. The allegation that the districts in that map had “perfectly equal populations” is denied, but it is admitted that each district's population deviated from all others by no more than one person, based on the 2010 data.

19. Admitted.

20. Admitted.

21. Admitted with the exception of the characterization of the population increase as “significant,” which is denied as vague.

22. Admitted.

23. Admitted.

24. Admitted.

25. Denied. According to the 2020 Census results, if Pennsylvania's population were apportioned as evenly as possible into the 17 congressional districts to which it is entitled, each district would have approximately 764,865

persons, which is approximately 59,177 more persons per district than under the current plan.

26. Admitted.

27. Admitted.

28. Denied as vague. By way of further answer, in light of the 2020 Census data, Congressional Districts 8, 9, 12, 13, 14, 15, 16, and 18 have fewer persons than they would if the Districts were equally populated, and that Congressional Districts 1, 2, 3, 4, 5, 6, 7, 10, 11, and 17 have more persons than they would if the Districts were equally populated.

29. The allegations of this paragraph constitute conclusions of law to which no response is required.

30. The allegations of this paragraph constitute conclusions of law to which no response is required.

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted.

35. It is admitted that the General Assembly has not enacted a congressional plan that contains only 17 congressional districts. The remaining allegations of this paragraph constitute conclusions of law to which no response is required.

36. The allegations of this paragraph constitute conclusions of law to which no response is required.

37. It is admitted that the P.L. 94-171 data was released in August 2021, and that the General Assembly has not yet passed a map for presentment to the Governor.

38. The allegations in this paragraph characterize written statements by the Governor and others. Those statements speak for themselves, and the Governor denies any characterization thereof. By way of further answer, in November 2021, Governor Wolf announced that the Pennsylvania Redistricting Advisory Council that he had convened had finalized a set of guiding principles. These principles include, among other things, legal principles serving as a minimal floor of protection, so that districts have compact and contiguous territory that minimizes as many divisions of political subdivisions as practicable; principles of representation, to maintain communities of interest and assure equal representation and fairness; and principles of process, to ensure that the public has an opportunity

to provide input on, and participate in the evaluation of, the map passed by the General Assembly.

39. It is admitted that the redistricting map passed by the House State Government Committee on December 15, 2021, by a 14-11 vote, does not comply with the principles outlined by the Redistricting Council because, among other reasons, that map splits multiple communities of interest in ways that do not appear to be motivated by compelling legal principles, but rather by a desire to make districts more favorable to Republican candidates.

40. Denied as vague. By way of further answer, the Governor incorporates by reference his answer to Paragraph 39 above.

41. It is admitted that the General Assembly has adjourned for the remainder of 2021 without passing any congressional plans, and that the General Assembly's timeline for considering and enacting a congressional plan is jeopardizing Pennsylvania's ability to conduct timely 2022 primary elections.

42. The allegations of this paragraph characterize previous written statements of the Department of State or its officials. Those statements speak for themselves, and the Governor denies any characterization thereof. By way of further answer, the Governor agrees that, if a new redistricting plan is not legislatively enacted in the very near future, it will be necessary and appropriate

for the judiciary to implement a plan, and that the judiciary should begin preparing for that eventuality now.

43. It is admitted that both houses of the General Assembly have announced that they will not reconvene any earlier than January 4, 2022, which would make it impossible for Pennsylvania's political branches to enact a congressional district map by the end of 2021. In response to the allegation that "the Department of State's timeline cannot be met, thus jeopardizing Pennsylvania's ability to conduct timely elections for 2022," the Governor incorporates by reference his answers to Paragraphs 41 and 42 above.

44. Admitted.

45. It is admitted that, pursuant to the Pennsylvania Election Code, the first day on which nomination petitions may be circulated and filed for candidates seeking to appear on the ballot for the 2022 primary election is February 15, 2022, and the last day for circulating and filing such petitions is three weeks later.

46. To the extent the allegations of this paragraph constitute legal conclusions, no response is required. By way of further answer, it is admitted that, as a practical matter, finalized congressional districts need to be in place before candidates in those districts begin to collect signatures on their nomination petitions, so that the candidates know who is eligible to sign the petitions; that the

location of district boundaries bears on strategic decisions made by potential congressional candidates; and that many voters are interested in knowing, before the primary election process begins, the districts in which they reside and will vote.

47. The facts and circumstances of *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), and *League of Women Voters of Pennsylvania v. Commonwealth*, 181 A.3d 1083 (Pa. 2018) are set forth in the Court’s opinions. Those opinions speak for themselves, and the Governor denies any characterization thereof.

48. Denied as stated. It is denied that the political branches are currently at an “impasse” over the enactment of a new congressional map, although the likelihood of an impasse is increasing. By way of further answer, although it is still possible for a new redistricting map to be legislatively enacted on a timeline consistent with the current primary election calendar, that prospect is in substantial doubt given, among other things, the current status of the General Assembly’s consideration of potential maps, the fact that both chambers of the General Assembly are currently adjourned, and the paucity of sessions days scheduled by the House of Representatives and Senate in January 2022. The Governor agrees that, if a new redistricting plan is not legislatively enacted in the very near future, it will be necessary and appropriate for the judiciary to implement a plan, and that the judiciary should begin preparing for that eventuality now.

49. The Governor incorporates by reference all prior paragraphs of this Answer and the paragraphs below as though fully set forth herein.

50. The allegations of this paragraph constitute legal conclusions to which no response is required.

51. The allegations of this paragraph constitute legal conclusions to which no response is required.

52. The allegations of this paragraph constitute legal conclusions to which no response is required.

53. Admitted in part, denied in part. It is admitted that, based on the 2020 Census results, Pennsylvania's current congressional district plan places voters into districts with disparate populations. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

54. The allegations of this paragraph constitute legal conclusions to which no response is required.

55. The Governor incorporates by reference all prior paragraphs of this Answer and the paragraphs below as though fully set forth herein.

56. The allegations of this paragraph constitute conclusions of law to which no response is required.

57. It is admitted that, when the Pennsylvania Supreme Court adopted a congressional redistricting plan in 2018 in the *League of Women Voters* case, the Court crafted a plan in which the population deviation among districts was, based on the data relied on by the Court, no more than one person. It is also admitted that, based on the 2020 Census data, the population deviation among Pennsylvania's congressional districts is now far greater, and the population of some districts now exceeds that of others by tens of thousands of people. The remaining allegations of this paragraph constitute conclusions of law to which no response is required.

58. It is admitted that, in light of the 2020 Census data, Pennsylvania's current congressional district plan is malapportioned.

59. The allegations of this paragraph constitute legal conclusions to which no response is required.

60. The Governor incorporates by reference all prior paragraphs of this Answer and the paragraphs below as though fully set forth herein.

61. The allegations of this paragraph constitute conclusions of law to which no response is required.

62. It is admitted that Pennsylvania is currently allotted 18 seats in the U.S. House of Representatives but that, starting with the next Congress, it will be

allotted only 17 seats. The remaining allegations of this paragraph constitute conclusions of law to which no response is required.

63. The allegations of this paragraph constitute conclusions of law to which no response is required.

WHEREFORE, the Governor respectfully requests that, if a new congressional district map is not legislatively enacted in a timely manner, the Court adopt a new congressional district map that complies with all applicable legal requirements and best promotes the fair and equal representation of all Pennsylvanians in the U.S. House of Representatives.

Dated:

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

By: /s/ Robert A. Wiygul
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300

*Counsel for Intervenor-Respondent Tom Wolf,
Governor of the Commonwealth of Pennsylvania*

VERIFICATION

I, Thomas W. Wolf, Governor of the Commonwealth of Pennsylvania, verify that the facts set forth in the foregoing Answer to Petitioners' Petition for Review Addressed to the Court's Original Jurisdiction are true and correct to the best of my information, knowledge and belief. I understand that the statements contained herein are subject to the penalties of 18 P.S. § 4904 relating to unsworn falsification to authorities.

Dated: _____

Thomas W. Wolf
Governor of the Commonwealth of Pennsylvania

Exhibit B

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

*Counsel for Intervenor Respondent
Governor Wolf*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

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

Respondents.

No. 464 MD 2021

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,

No. 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.

**INTERVENOR-RESPONDENT GOVERNOR WOLF’S ANSWER TO
GRESSMAN PETITIONERS’ PETITION FOR REVIEW
ADDRESSED TO THE COURT’S ORIGINAL JURISDICTION**

Intervenor-Respondent Tom Wolf, in his official capacity as Governor of the Commonwealth of Pennsylvania (the “Governor”), hereby answers the Petition for Review Addressed to the Court’s Original Jurisdiction in case no. 465 MD 2021 as follows:

1. After reasonable investigation, the Governor lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegation Petitioners are registered voters and leading mathematicians and scientists in Pennsylvania. The remaining allegations of this paragraph contain Petitioners’ characterization of their action and legal conclusions to which no response is required.

2. It is admitted that Pennsylvania’s congressional map was last drawn in 2018, using data from the 2010 Census; that, since that time, Pennsylvania has lost

a congressional seat; and that a new map is needed for the 2022 election cycle. It is further admitted that, based on the 2020 Census results, the current congressional district map is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

3. The allegations of this paragraph constitute conclusions of law to which no response is required.

4. It is admitted that the House State Government Committee approved a preliminary congressional district plan, on a 14-11 vote, on December 15, 2021, but it is denied, on information and belief, that that plan has not received a first consideration in the House. It is admitted that neither the House or the Senate has convened since December 15, 2021; that both chambers of the General Assembly have announced that they will not reconvene before January 2022; and that the General Assembly has not yet passed a new congressional district plan. The remaining allegations of this paragraph constitute conclusions of law to which no response is required.

5. It is admitted that, pursuant to the Pennsylvania Election Code, the period for circulating and filing candidate nomination petitions is scheduled to commence on February 15, 2022.

6. The allegations of this paragraph characterize previous written statements by Respondents. Those statements speak for themselves, and the Governor denies any characterization thereof. By way of further answer, although it is still possible for a new redistricting map to be legislatively enacted on a timeline compatible with the primary election calendar, that prospect is in substantial doubt given, among other things, the current status of the General Assembly's consideration of potential maps, the fact that both chambers of the General Assembly are currently adjourned, and the paucity of session days scheduled by the House of Representatives and Senate in January 2022. The Governor agrees that, if a new redistricting plan is not legislatively enacted in the near future, it will be necessary and appropriate for the judiciary to implement a plan, and that the judiciary should begin preparing for that eventuality now.

7. Denied as stated. By way of further answer, the Governor incorporates his answer to Paragraph 6 above.

8. It is admitted that Petitioners filed an application asking the Supreme Court of Pennsylvania to exercise King's Bench power or extraordinary jurisdiction over this case, and that the Supreme Court's exercise of extraordinary jurisdiction is warranted to avoid or minimize disruption to the primary election process.

9. The allegations of this paragraph constitute conclusions of law to which no response is required.

10. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them. By way of further answer, the Governor incorporates his answers to Paragraphs 11-22 below.

11. It is admitted that, based on the 2020 Census data, Congressional District 5 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

12. It is admitted that, based on the 2020 Census data, Congressional District 5 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

13. It is admitted that, based on the 2020 Census data, Congressional District 5 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

14. It is admitted that, based on the 2020 Census data, Congressional District 12 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

15. It is admitted that, based on the 2020 Census data, Congressional District 12 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

16. It is admitted that, based on the 2020 Census data, Congressional District 12 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

17. It is admitted that, based on the 2020 Census data, Congressional District 3 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

18. It is admitted that, based on the 2020 Census data, Congressional District 10 is malapportioned. After reasonable investigation, the Governor lacks

knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

19. It is admitted that, based on the 2020 Census data, Congressional District 7 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

20. It is admitted that, based on the 2020 Census data, Congressional District 7 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

21. It is admitted that, based on the 2020 Census data, Congressional District 5 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

22. It is admitted that, based on the 2020 Census data, Congressional District 5 is malapportioned. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

23. It is admitted that Respondent Veronica Degraffenreid is the Acting Secretary of the Commonwealth and sued in her official capacity only. It is also admitted that Respondent Degraffenreid is Pennsylvania's Chief Election Official and a member of the Governor's Executive Board. The remaining allegations of this paragraph constitute legal conclusions to which no response is required.

24. It is admitted that Respondent Jessica Mathis is the Director of the Bureau of Elections and Notaries, which is part of the Pennsylvania Department of State, and that Respondent Mathis is sued in her official capacity only. The remaining allegations of this paragraph constitute legal conclusions to which no response is required.

25. Admitted, except that it was the Supreme Court of Pennsylvania, rather than "[t]his Court," that adopted Pennsylvania's current congressional district map in 2018.

26. Admitted.

27. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that "Pennsylvania's congressional districts vary in population by as much as 95,000 residents" and therefore denies that allegation. The remaining allegations of this paragraph are admitted upon information and belief.

28. After reasonable investigation, the Governor lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in this paragraph and therefore denies that allegation.

29. The allegations of this paragraph characterize previous written statements of Respondents. Those statements speak for themselves, and the Governor denies any characterization thereof.

30. To the extent that the allegations of this paragraph characterize previous written statements of the Department of State or its officials, those statements speak for themselves, and the Governor denies any characterization thereof. It is admitted that, pursuant to the Election Code, the first date for candidates to circulate nomination petitions for the 2022 primary election is February 15, 2022, and that the last date for circulating and filing such petitions is March 8, 2022.

31. Admitted in part and denied in part. It is admitted that the House State Government Committee approved a preliminary congressional district plan, on a 14-11 vote, on December 15, 2021, but it is denied, on information and belief, that that plan has not received a first consideration in the House. It is admitted that neither the House or the Senate has convened since December 15, 2021; that both chambers of the General Assembly have announced that they will not reconvene before January 2022; and that the General Assembly has not yet passed a new

congressional district plan. It is denied that it is presently impossible to enact a timely congressional district map. By way of further answer, although it is still possible for a new redistricting map to be legislatively enacted on a timeline compatible with the primary election calendar, that prospect is in substantial doubt given, among other things, the current status of the General Assembly's consideration of potential maps, the fact that both chambers of the General Assembly are currently adjourned, and the paucity of sessions days scheduled by the House of Representatives and Senate in January 2022. The Governor agrees that, if a new redistricting plan is not legislatively enacted in the near future, it will be necessary and appropriate for the judiciary to implement a plan, and that the judiciary should begin preparing for that eventuality now.

32. Denied as stated. To the extent that the allegations of this paragraph characterize previous written statements of the Department of State or its officials, those statements speak for themselves, and the Governor denies any characterization thereof. It is admitted that the General Assembly has not yet passed a congressional redistricting plan. By way of further answer, the Governor incorporates his answer to Paragraph 31 above.

33. It is admitted that Petitioners have asked the Supreme Court of Pennsylvania to exercise its King's Bench power or extraordinary jurisdiction over Petitioners' case. It is further admitted that the Supreme Court's exercise of

extraordinary jurisdiction is warranted in both of these consolidated cases. By way of further answer, the Governor incorporates his answer to Paragraph 31 above.

34. The Governor incorporates his answers to Paragraphs 1-33 above as if fully set forth herein.

35. The allegations of this paragraph constitute conclusions of law to which no response is required.

36. The allegations of this paragraph constitute conclusions of law to which no response is required.

37. The allegations of this paragraph comprise characterizations of Petitioners' petition and claims and conclusions of law, and therefore no response is required.

38. The allegation that "Petitioners' districts, and all other districts in the current plan, vary by as much as tens of thousands of persons relative to one another and to the ideal district population" is denied as vague and unclear. It is admitted that Pennsylvania's current congressional districts are malapportioned and that the population of certain districts in Pennsylvania's current congressional district plan varies by as much of tens of thousands of persons from the population of certain other districts.

39. Denied as stated. By way of further answer, the cause of these deviations from population equality is the shifting of Pennsylvania's population relative to the population measured in the 2010 Census.

40. The allegations of this paragraph constitute conclusions of law to which no response is required.

41. The Governor incorporates his answers to Paragraphs 1-33 above as if fully set forth herein.

42. The allegations of this paragraph constitute conclusions of law to which no response is required.

43. The allegations of this paragraph constitute conclusions of law to which no response is required.

44. It is admitted that, because Pennsylvania does not yet have a lawful congressional district plan for the 2022 primary and general elections, voters do not know what the boundaries of the districts used in those elections will be.

45. It is admitted that, because Pennsylvania does not yet have a lawful congressional district plan for the 2022 primary and general elections, potential candidates do not yet know the identity of all of their prospective constituents, and Petitioners do not yet know the identity of all of their fellow district residents.

46. To the extent the allegations of this paragraph constitute conclusions of law, no response is required. To the extent the allegations of this paragraph require a response, the Governor incorporates his answer to Paragraphs 44 and 45 above.

47. The allegations of this paragraph constitute conclusions of law to which no response is required.

48. The Governor incorporates his answers to Paragraphs 1-33 above as if fully set forth herein.

49. The allegations of this paragraph constitute conclusions of law to which no response is required.

50. The allegations of this paragraph constitute conclusions of law to which no response is required.

51. It is admitted that Pennsylvania's congressional districts are currently malapportioned, and that holding future elections based on such districts (which would be unlawful) would dilute the weight of certain Pennsylvania voters relative to others.

52. The allegations of this paragraph constitute conclusions of law to which no response is required.

WHEREFORE, the Governor respectfully requests that, if a new congressional district map is not legislatively enacted in a timely manner, the Court adopt a new congressional district map that complies with all applicable legal requirements and best promotes the fair and equal representation of all Pennsylvanians in the U.S. House of Representatives.

Dated:

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

By: /s/ Robert A. Wiygul
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300

*Counsel for Intervenor-Respondent Governor
Wolf*

VERIFICATION

I, Thomas W. Wolf, Governor of the Commonwealth of Pennsylvania, verify that the facts set forth in the foregoing Answer to Petitioners' Petition for Review Addressed to the Court's Original Jurisdiction are true and correct to the best of my information, knowledge and belief. I understand that the statements contained herein are subject to the penalties of 18 P.S. § 4904 relating to unsworn falsification to authorities.

Dated: _____

Thomas W. Wolf
Governor of the Commonwealth of Pennsylvania

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

Dated: December 31, 2021

/s/ Robert A. Wiygul
Robert A. Wiygul