

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

**William C. Toth Jr., et al.**

Plaintiffs,

v.

**Leigh M. Chapman, et al.,**

Defendants

Case No. 1:22-cv-00208-JPW

**MOTION FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT**

The plaintiffs respectfully ask for leave to file a second amended complaint. The plaintiffs' first amended complaint was filed before the Supreme Court of Pennsylvania issued its order of February 23, 2022, which purports to adopt the Carter Plan as the state's congressional map. The second amended complaint will ask the Court to declare the Carter Plan unconstitutional and enjoin the defendants from implementing or enforcing it. The second amended complaint will also allege that the Carter Plan violates the equal-population rule established in *Wesberry v. Sanders*, 376 U.S. 1 (1964), because it contains two-person deviations among congressional districts.

Rule 15(b) allows a party to seek leave to amend "at any time, even after judgment . . . to conform [the pleadings] to the evidence and to raise an unpleaded issue." Fed. R. Civ. P. 15(b). And a court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave to amend is

appropriate and consistent with justice because the circumstances of this case have changed now that the Supreme Court of Pennsylvania has issued an order purporting to adopt the Carter Plan, and the defendants intend to implement the Carter Plan as the state's congressional map.

We have attached a proposed order to this motion, and we will file a copy of the proposed second amended complaint (along with its exhibits) as a separate ECF filing.

### CONCLUSION

The plaintiffs' motion for leave to file a second amended complaint should be granted.

Respectfully submitted.

WALTER S. ZIMOLONG III  
Pennsylvania Bar No. 89151  
Zimolong LLC  
Post Office Box 552  
Villanova, Pennsylvania 19085  
(215) 665-0842  
wally@zimolonglaw.com

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
Pennsylvania Bar No. 91505  
Mitchell Law PLLC  
111 Congress Avenue, Suite 400  
Austin, Texas 78701  
(512) 686-3940 (phone)

(512) 686-3941 (fax)  
jonathan@mitchell.law

*Counsel for Plaintiffs*

Dated: February 26, 2022

## CERTIFICATE OF CONFERENCE

I certify that I conferred with Robert A. Wiygul, counsel for the defendants, and he informed me that the defendants oppose this motion.

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
*Counsel for Plaintiffs*

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## CERTIFICATE OF SERVICE

I certify that on February 26, 2022, I filed this document on CM/ECF, which will effectuate service upon the following counsel of record:

ROBERT A. WIYGUL  
CARY L. RICE  
JOHN B. HILL  
Hangley Aronchick Segal Pudlin & Schiller  
One Logan Square, 27th Floor  
Philadelphia, Pennsylvania 19103-6933  
(215) 568-6200  
rwiygul@hangley.com  
crice@hangley.com  
jhill@hangley.com

JOSHUA A. MATZ  
Kaplan, Hecker & Fink  
1050 K Street NW, Suite 1040  
Washington, DC 20001  
(929) 294-2537  
jmatz@kaplanhecker.com

*Counsel for Defendants*

ABHA KHANNA  
LALITHA D. MADDURI  
JYOTI JASRASARIA  
TINA Y. MENG  
Elias Law Group LLP  
1700 Seventh Ave., Suite 2100  
Seattle, Washington 98101  
(206) 656-0177  
akhanna@elias.law  
lmadduri@elias.law  
jjasrasaria@elias.law  
tmeng@elias.law

ELIZABETH WINGFIELD  
Ballard Spahr LLP  
1735 Market Street, 51st Floor  
Philadelphia, Pennsylvania 19103  
(215) 665-8500 (phone)  
(215) 864-8999 (fax)  
wingfelde@ballardspahr.com

*Counsel for Proposed Intervenors*

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
*Counsel for Plaintiffs*