

IN THE SUPREME COURT OF PENNSYLVANIA

11 MM 2022

**KERRY BENNINGHOFF, Individually and as Majority Leader of the
Pennsylvania House of Representatives,**

Petitioner,

v.

2021 LEGISLATIVE REAPPORTIONMENT COMMISSION,

Respondent.

**JOANNA E. MCCLINTON'S ANSWER IN OPPOSITION TO
PETITIONER KERRY BENNINGHOFF'S APPLICATION
TO AMEND THE COURT'S FEBRUARY 17, 2022 ORDER**

Joanna E. McClinton, by and through her undersigned counsel, states the following in response to Petitioner Kerry Benninghoff's ("Petitioner") request that this Court amend its February 17, 2022 Order to allow for reply briefs and oral argument. This request should be denied for the following reasons:

1. First, Petitioner is delayed in seeking this relief. Petitioner filed his Petition for Review of the Final Plan of the 2021 Legislative Reapportionment Commission on February 17, 2022.
2. That same day, on February 17, 2022, the Court issued an Order setting the briefing schedule for all appeals from the Final Plan of the 2021

Legislative Reapportionment Commission. The Order further directed that “[n]o reply briefs will be permitted” and that “Petitions for Review will be decided on submitted briefs.”

4. Petitioner did not timely contest the briefing schedule established by the Court more than two weeks ago. Rather, that same day, he filed an Application For Emergency Relief Directed to the 2022 Elections arguing that the 2022 primary and general elections “should occur in the existing House and Senate districts, rather than under the Commission’s 2021 Final Plan.” Only after the Court denied his February 17, 2022 emergency application did Petitioner file this Application, which appears intended to delay the Court’s approval of the Final Plan. And, if approval of the final plan is delayed, Petitioner will undoubtedly renew his already rejected argument that the upcoming elections should occur under the existing House and Senate maps.

5. Moreover, the Court has already considered and denied the exact relief sought by Petitioner in *Covert v. 2021 Legislative Reapportionment Comm’n*, 4 WM 2022. In that case, the petitioner similarly filed an Application on March 3, 2022, requesting the opportunity for both oral argument and a reply brief.

7. The Court denied Covert’s Application on March 4, 2022. There is no reason to reconsider that decision.

8. Third, Petitioner's claim of significant delay in the LRC process is without any support in the well-developed record.

9. In Paragraphs 7 and 8 of his Application, Petitioner asserts that the reallocation of prisoner data "significantly delayed" the adoption of a final plan by the Legislative Reapportionment Commission and foreclosed the opportunity for a reply brief and oral argument.

10. Pursuant to Resolutions adopted by the Legislative Reapportionment Commission, the Legislative Data Processing Center and its GIS vendor, the Penn State Data Center, delivered two sets of usable data for legislative reapportionment and congressional redistricting.

11. On October 5, 2021, the first set of census data, without prisoner reallocation, was delivered to the Legislative Reapportionment Commission.

12. A second set of census data reallocating certain state prisoners was delivered to the Legislative Reapportionment Commission on October 14, 2022.

13. Just *nine* days passed between delivery of these two Census data sets and therefore Petitioner's assertions of substantial delay prejudicing his position are meritless.

14. Finally, Petitioner's argument that a Reply Brief and oral argument are needed to allow for both review of the agency record and to reply to unanticipated arguments is belied by the fact that Petitioner filed an 85 page brief

in support of his Petition for Review last night which is replete with both record cites and arguments intended to rebut the March 4, 2022 Report filed by Chairman Nordenberg.

15. Petitioner was a Commission member and had knowledge of all proceedings and filings which constitute the agency record now before the Court. His counsel, experienced in redistricting litigation and informed by their own active participation in the Commission's processes and proceedings, prepared the Petition for Review and filed an 85 page brief in support of the Petition with full awareness of this record and the Commission's decisions.

16. Petitioner is interested in delaying these proceedings and running on the old maps, and his notion of fairness does not justify reconsideration of the Court's February 17, 2022 and March 4, 2022 Orders. Indeed, predictably, the Conclusion to Petitioner's 85 page brief in support asks this Court to "order that the 2022 elections be conducted using the 2012 plan districts."

For the above reasons, this Court should deny Petitioner's Application.

Respectfully Submitted,

/s/ Daniel T. Brier

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Commission

Date: March 8, 2022

CERTIFICATE OF COMPLIANCE

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

/s/ Daniel T. Brier

Daniel T. Brier

Date: March 8, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Notice of Intervention upon counsel via the Court's PACFile System which service satisfies the requirements of Pa. R. App. P. 121.

/s/ Daniel T. Brier
Daniel T. Brier

Date: March 8, 2022

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