

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM C. TOTH JR., *et al.*,

Plaintiffs,

v.

LEIGH M. CHAPMAN, *et al.*,

Defendants.

v.

CAROL ANN CARTER, *et al.*,

Intervenor-Defendants.

No. 1:22-cv-00208-JPW

Honorable Jennifer P. Wilson

**CARTER PETITIONERS' BRIEF IN SUPPORT OF THEIR MOTION TO
DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**

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INTRODUCTION

After Pennsylvania's political branches were unable to enact a new congressional redistricting plan following the 2020 Census, litigation commenced in the Commonwealth's state courts for the express purpose of adopting a new map. That litigation involved Defendants, the Carter Petitioners, and more than a dozen other parties, including political parties, legislators, and candidates. Its ultimate result was the Pennsylvania Supreme Court's adoption of the map that Plaintiffs now seek to invalidate (the "2022 Congressional Map").

At no point did Plaintiffs seek to intervene in those proceedings to make the argument that they now make to this Court: that the 2022 Congressional Map violates the U.S. Constitution because the state courts lacked authority to approve a map in the first place. Instead, Plaintiffs simply waited—for months. They did absolutely nothing until it was evident that, having carefully considered all of the evidence and multiple different proposed maps before it, the Pennsylvania Supreme Court was poised to adopt the Carter Plan, which was the plan that deviated the least from the previously court-approved plan that Pennsylvanians have been voting under since 2018.

Only then did Plaintiffs file this lawsuit in which they make a remarkable request for relief that, if granted, would violate federal law and binding U.S. Supreme Court precedent. Plaintiffs ask this Court to override the Pennsylvania

Supreme Court's order and force Pennsylvania to implement at-large elections for the first time in centuries. But Plaintiffs' claims fail on every level, including jurisdictionally. And the relief they request would also cause widespread confusion for voters and candidates, force the election calendar to reset entirely, and potentially require moving the primary. Upon approving the 2022 Congressional Map, the Pennsylvania Supreme Court ordered Defendants to begin conducting the election "without delay." Renewed Emergency Temporary Restraining Order ("Renewed TRO") Ex. 1 at 2-4, ECF No. 30-1. As a result, congressional elections in Pennsylvania are well underway; candidates have been circulating nomination petitions for almost a week, and the primary election is less than three months away.

Plaintiffs would have this Court upend all of this, yet they provide no basis for the extraordinary relief they request, nor can they justify the consequent intrusion on state sovereignty. In fact, Plaintiffs have failed to even demonstrate that any court has jurisdiction to hear their Elections Clause claims (Claims 1 and 2 of the Second Amended Complaint): they cite only generalized and speculative injuries that do not implicate any constitutional rights, they fail to identify a single injured party who could support a claim under the Elections Clause, and their request defies the Supreme Court's clear directive that "a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." *Grove v. Emison*, 507 U.S. 25, 34 (1993); *see also id.* (affirming state courts have a

role in congressional reapportionment and holding that lower courts should not “ignore[e] the . . . legitimacy of state *judicial* redistricting”) (emphasis in original).

Under 28 U.S.C. § 2284, this Court has authority to dismiss Plaintiffs’ Elections Clause claims without convening a three-judge court because Plaintiffs lack standing to assert those claims, and their Elections Clause challenges are “legally . . . insubstantial.” *Page v. Bartels*, 248 F.3d 175, 191 (3d Cir. 2001) (citing *Goosby v. Osser*, 409 U.S. 512, 518 (1973); *Shapiro v. McManus*, 577 U.S. 39, 44-45 (2015)).

For these reasons, and those discussed below, this Court should dismiss Plaintiffs’ Claim 1 (implementation of the 2022 Congressional Plan violates the Elections Clause and 2 U.S.C. § 2a(c)(5)) and Claim 2 (changes to the election deadlines prior to the primary election violate the Elections Clause) (the “Elections Clause claims”).¹

BACKGROUND

After the 2020 Census, which resulted in Pennsylvania losing a seat in the U.S. House of Representatives, Pennsylvania had to redraw its congressional district map. *See* Second Am. Compl. (“SAC”) Ex. 1 ¶¶ 2-3, ECF No. 49-2. But the General

¹ The Carter Petitioners are not moving to dismiss Plaintiffs’ Claim 3 (the 2022 Congressional Plan violates the Equal-Population Rule) at this time, but reserve the right to do so at a later time, pursuant to the Court’s February 25 Order. *See* Order ¶ 2, ECF No. 43.

Assembly and Governor failed to reach agreement and came to an impasse. *Id.* ¶ 5. Foreseeing this outcome, the Carter Petitioners filed a lawsuit in April 2021, noting that the 2020 census results rendered the prior court-drawn congressional map malapportioned and asking the Commonwealth Court to adopt a new constitutional congressional map should the political branches fail to come to agreement. *See Carter v. Degraffenreid*, No. 132 M.D. 2021, 2021 WL 4735059, at *7 (Pa. Commw. Ct. Oct. 8, 2021). After considering multiple intervention motions and briefing and argument on objections, the Commonwealth Court dismissed that case without prejudice on ripeness grounds.

On December 17, 2021, once it became unmistakable that the political branches would in fact not reach agreement, the Carter Petitioners filed a new petition, once again asking the Pennsylvania Commonwealth Court to declare the 2018 congressional map unconstitutional and adopt a constitutional congressional districting plan. SAC ¶ 3, at 18-19. That litigation continued apace for the following three months. Pursuant to the court's scheduling order, ten parties sought intervention by December 31, 2021; the court subsequently granted intervention for six of those parties and allowed the other four to participate as *amici*. On January

24, 2022, the Carter Petitioners, along with ten other participating parties,² submitted a total of 13 proposed maps to the Commonwealth Court for consideration. SAC Ex. 4, ECF No. 49-4. The Commonwealth Court held a two-day evidentiary hearing on the proposed maps, stating at the start that it would proceed to adopt a new congressional district map if the General Assembly and Governor failed to adopt one by January 30. *See* SAC Ex. 9 at 14-15, ECF No. 49-9. That deadline passed without a legislatively enacted map.

On February 2, the Pennsylvania Supreme Court asserted extraordinary jurisdiction over the redistricting litigation and scheduled oral argument. A week later, the Court ordered that the state's General Primary Calendar be "temporarily suspended" pending further order to allow for adoption of a court-ordered plan. *See* SAC Exs. 8, 10, ECF Nos. 49-8, 49-10.

Plaintiffs initiated this action on February 11. They argue that the Elections Clause forbids the state courts from adopting a map, and seek an injunction compelling Defendants to hold at-large congressional elections instead. *See generally* Compl., ECF No. 1. On February 20, more than a week after they first

² This includes the Gressman Petitioners, who filed a petition that was consolidated with the Carter Petitioners' case, as well as the following: (1) Republican Legislative Intervenors, (2) Governor Wolf, (3) Senate Democratic Caucus Intervenors, (4) House Democratic Caucus Intervenors, (5) Republican Congressional Intervenors, (6) Voters of the Commonwealth *amicus*, (7) Citizen-Voters *amicus*, (8) Draw the Lines PA *amicus*, and (9) Ali et al. *amicus* group.

filed their complaint, Plaintiffs amended their complaint to add an additional plaintiff. *See generally* Am. Compl., ECF No. 7. That same day, Plaintiffs also filed an Emergency Motion for TRO or Preliminary Injunction seeking the same relief. *See* Mot. Prelim. Inj. at 12, ECF No. 11.

The state case continued and, on February 23, the Pennsylvania Supreme Court ordered the implementation of the congressional plan submitted by Carter Petitioners. SAC Ex. 11 at 2, ECF No. 49-11. Pursuant to the court-ordered election calendar, congressional candidates began circulating nomination petitions under the new map almost a week ago. State Defendants have also taken steps to implement the 2022 Congressional Map. *See id.* at 3; *see generally* Exhibit A (filed. Feb. 25, 2022).

After the Pennsylvania Supreme Court issued its ruling, Plaintiffs filed a renewed Emergency Motion for TRO, which this Court denied on February 25 while also setting a schedule for motions to dismiss and Plaintiffs' pending Preliminary Injunction motion. *See* Order at 1-2 ECF No. 43. On February 28, Plaintiffs appealed that denial to the U.S. Supreme Court. *See* Notice of Appeal, ECF No. 50. That same day, Plaintiffs sought leave to file a second amended complaint, which the Court granted. *See generally* SAC; Order at 1, ECF No. 55.

Through the SAC, Plaintiffs continue to ask this Court to abrogate the Pennsylvania Supreme Court's order adopting a new congressional map. SAC ¶ 75.

Plaintiffs’ theory is that the Elections Clause of the U.S. Constitution prohibits Defendants from implementing the new map and elections calendar adopted by the Pennsylvania Supreme Court, and that 2 U.S.C. § 2a(c)(5) requires Pennsylvania to hold at-large elections. *See* SAC ¶¶ 59-62, 64-66. Plaintiffs additionally allege that the 2022 Congressional Map violates the Fourteenth Amendment’s equal population requirement for congressional districts. *Id.* at 5, ¶¶ 6, 68.

LEGAL STANDARD

Plaintiffs’ Elections Clause claims should be dismissed under either Federal Rule of Civil Procedure 12(b)(1) or 12(b)(6). The existence of subject matter jurisdiction is a threshold issue, and absent a proper basis for it, a case must be dismissed. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 96 (1998). Plaintiffs bear the burden of showing that federal jurisdiction is appropriate. *Samuel-Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004). Under Rule 12(b)(6), the Court shall dismiss a complaint, in whole or in part, if the plaintiff has failed to “state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (a complaint must “state a claim to relief that is plausible on its face”).

ARGUMENT

Under 28 U.S.C. § 2284, “[a] three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not

justiciable in the federal courts.” *Shapiro*, 577 U.S. at 44–45 (quoting *Gonzalez v. Automatic Emps. Credit Union*, 419 U.S. 90, 100 (1974)). Thus, this Court has authority to dismiss Plaintiffs’ Elections Clause claims without convening a three-judge court because Plaintiffs lack standing and their Elections Clause claims are legally insubstantial. *Page*, 248 F.3d at 191. “Insubstantiality in the claim may appear because of absence of federal jurisdiction or lack of substantive merit” in a claim. *Md. Citizens for A Representative Gen. Assembly v. Governor of Md.*, 429 F.2d 606, 611 (4th Cir. 1970); *see also id.* (“When it thus appears that there is no substantial question for a three-judge court to answer, dismissal of the claim for injunctive relief by the single district judge is consistent with the purpose of the three-judge statutes, and it avoids the waste and delay inherent in a cumbersome procedure.”).

In this case, Plaintiffs’ Elections Clause claims should be dismissed for three independently sufficient reasons. *First*, Plaintiffs lack both Article III and prudential standing to advance these claims. *Second*, Plaintiffs’ request for relief is moot. *Third*, Plaintiffs fail to state a claim for relief. Each is addressed below.

I. Plaintiffs lack standing to assert violations of the Elections Clause.

The inquiry into standing “asks whether a litigant is entitled to have a federal court resolve his grievance,” and “[t]his inquiry involves ‘both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.’”

Kowalski v. Tesmer, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). Plaintiffs cannot meet the requirements of constitutional or prudential standing for their Elections Clause claims.

A. Plaintiffs do not meet the constitutional requirements of standing.

Plaintiffs lack Article III standing to assert Elections Clause claims because their only purported injuries are (1) common to all voters in Pennsylvania or (2) speculative grievances untethered to any cognizable right.

At its “irreducible constitutional minimum,” Article III standing requires (1) an injury-in-fact that is (2) fairly traceable to the defendant’s conduct, and (3) likely to be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs must demonstrate “an invasion of a legally protected interest” that is “concrete and particularized.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). As a general matter, asserting a right “to have the Government act in accordance with law” does not confer standing. *Allen v. Wright*, 468 U.S. 737, 754 (1984), *abrogated on other grounds by Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126–27 (2014); *see also TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021) (“[U]nder Article III, an *injury in law* is not an *injury in fact*. Only those plaintiffs who have been concretely harmed by a defendant’s . . . violation may sue . . . over that violation in federal court.”) (emphasis added). When the injury alleged by plaintiffs is undifferentiated and common to all members of the broader

electorate, courts routinely dismiss such cases as “generalized grievances” that do not support standing. *See, e.g., United States v. Richardson*, 418 U.S. 166, 173-74 (1974). This is the case here and this Court should dismiss.

1. Individual voters lack standing to assert Elections Clause claims.

The U.S. Supreme Court has held that private citizens do not have standing to assert a claim under the Elections Clause absent a “particularized stake in the litigation.” *Lance v. Coffman*, 549 U.S. 437, 442 (2007). In *Lance*, individual private citizens launched a collateral attack on a congressional districting plan adopted by the Colorado Supreme Court, arguing that only the state legislature could redistrict under the Elections Clause. *Id.* at 438. After describing the Court’s “lengthy” jurisprudence holding that federal courts should not serve as a forum for generalized grievances,” the Court articulated the “obvious” problem with the plaintiffs’ standing:

The only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is *precisely the kind of undifferentiated, generalized grievance* about the conduct of government that we have refused to countenance in the past. It is quite different from the sorts of injuries alleged by plaintiffs in voting rights cases where we have found standing.

Id. (emphasis added). Consistent with *Lance*, federal courts have repeatedly declined to adjudicate Elections Clause claims brought by individual plaintiffs. *See, e.g., Wise v. Circosta*, 2020 WL 6156302, at *6 (4th Cir. Oct. 20, 2020); *Corman v. Torres*,

287 F. Supp. 3d 558, 567 (M.D. Pa. 2018) (three-judge court holding plaintiffs lacked standing because claims “rest[ed] solely on the purported usurpation of the Pennsylvania General Assembly’s exclusive rights under the Elections Clause” which plaintiffs had no legal right to assert).

In fact, the Third Circuit recently dismissed strikingly similar Elections Clause claims asserted by one of the Plaintiffs currently before this Court, Jim Bognet, for this same reason. In that case, Bognet, a congressional candidate at the time, filed a lawsuit alleging violations of the Elections Clause after the Pennsylvania Supreme Court extended elections deadline and addressed rules relating to presumed timeliness of mail ballots. *Bognet v. Sec’y Commonwealth of Pennsylvania*, 980 F.3d 336, 346 (3d Cir. 2020), *cert. granted, judgment vacated sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021). The Third Circuit dismissed the case, holding that private individuals like Bognet lack standing to sue for alleged injuries attributable to a state government’s purported violations of the Elections Clause because those are not the type of particularized injuries giving rise to a federal claim. *Id.* at 349-51.

Plaintiffs’ claims fare no better this time. Bognet and the other Plaintiffs are individual voters and private citizens who allege that Defendants’ enforcement of the 2022 Congressional Map violates the Elections Clause. SAC ¶¶ 4-6, 52-53. In other words, Plaintiffs once again assert an interest in “hav[ing] the Government act

in accordance with law,” which is insufficient for Article III standing. *Bognet*, 980 F.3d at 348-49 (quoting *Allen*, 468 U.S. at 754). Any purported deprivation of rights, if it exists, is felt by all Pennsylvania voters equally, and Plaintiffs thus lack standing. *See Allen*, 468 U.S. at 754; *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344 (2006) (finding plaintiffs did not have standing where plaintiff “suffers in some indefinite way in common with people generally”).

2. Candidate plaintiffs lack standing to assert Elections Clause claims.

Plaintiffs *Bognet* and *Bashir* additionally claim they are injured because they are running for Congress, but their candidacy does not confer standing. In fact, *Bognet* made the same claim in 2020, and the Third Circuit rejected it, finding that such allegations still failed to establish that the challenged law affects the plaintiffs “in a particularized way when, in fact, all candidates in Pennsylvania, including [their] opponent[s],” are in a similar posture. *Bognet*, 980 F.3d at 351.

Implicitly recognizing that *Bognet* forecloses their claim to candidate standing, *Bognet* and *Bashir* try another gambit here, alleging injury based on the “uncertain[ty] of how they should campaign for a seat” because the 2022 Congressional Map may be declared unlawful. SAC ¶ 56. But any such uncertainty is *caused by their own meritless lawsuit*. It is well established that plaintiffs cannot manufacture an injury and then claim standing, as plaintiffs attempt here. *See*

Clapper v. Amnesty Int’l USA, 568 U.S. 398, 422 (2013) (Plaintiffs “cannot manufacture standing” by incurring burdens “in anticipation of non-imminent harm”). Even if there were a “substantial risk” that a federal court will “declare the map unlawful,” SAC ¶ 56, that is a risk Plaintiffs chose to incur when they filed this lawsuit. As reflected in the state court litigation, Pennsylvania voters, candidates, and legislators—Republicans and Democrats alike—all agree that Pennsylvania courts have authority to adopt and order the implementation of a congressional plan. *See, e.g.*, Exhibit B at 3 n.2 (filed Dec. 27, 2021). Plaintiffs alone are the ones to call the finality of the 2022 Congressional Map into question. *See Lujan*, 504 U.S. at 564 n.2 (1992) (standing “has been stretched beyond the breaking point when, as here . . . the acts necessary to make the injury happen are at least partly within the plaintiff’s own control”); *Clapper*, 568 U.S. 416 (“an enterprising plaintiff” should not be able to achieve Article III standing by simply alleging injury they chose to incur “based on a nonparanoid fear”).

Bashir and Bognet’s allegations that the alleged “uncertainty” and “risk” caused by their lawsuit will make it more difficult for them to raise money for their campaigns is even more far afield. SAC ¶ 56. Injuries that “stem[] from an indefinite risk of future harms inflicted by unknown third parties” are insufficient to confer standing. *Reilly v. Ceridian Corp.*, 664 F.3d 38, 42 (3d Cir. 2011) (citing *Lujan*, 504 U.S. at 564). And even if Plaintiffs could assert a cognizable injury based on the

speculative fundraising concerns prompted by their own litigation, any alleged injury would be inflicted not by Defendants, but by the Court should it grant Plaintiffs' requested relief. *See Clapper*, 568 U.S. at 418 (finding plaintiffs did not have standing where their "self-inflicted injuries are not fairly traceable to" defendants).

Finally, Bashir separately alleges that he is injured because the 2022 Congressional Map "forc[es] him to run in a congressional district" that is more Democratic than the Commonwealth overall. SAC ¶ 55. But elected officials and candidates have "no legally cognizable interest in the composition of the district" they hope to represent, *Corman*, 287 F. Supp. 3d at 569, and a legislator, or in this case a candidate, "suffers no cognizable injury, in a due process sense or otherwise, when the boundaries of his district are adjusted by reapportionment," *City of Phila. v. Klutznick*, 503 F. Supp. 663, 672 (E.D. Pa. 1980). Indeed, it is a "core principle of republican government" that voters "choose their representatives, not the other way around." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 823 (2015). This same principle necessarily extends to Bashir, who also has "no . . . interest in representing any particular constituency." *Klutznick*, 503 F. Supp. at 672; *see also Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 916 (M.D. Pa. 2020), *aff'd sub nom. Donald J. Trump for President, Inc. v. Sec'y of Pa.*, 830 F. App'x 377 (3d Cir. 2020), *and appeal dismissed sub nom. Signed v. PA*, No.

20-3384, 2021 WL 807531 (3d Cir. Jan. 7, 2021) (rejecting Plaintiffs’ assertion of “competitive standing” based on the potential loss of an election).³

3. County election official Plaintiff Alan Hall lacks standing to assert Elections Clause claims.

The final Plaintiff, Alan Hall, claims that, as a member of the Susquehanna Board of Elections, he has an injury-in-fact because Defendants’ failure to implement at-large elections leaves him with uncertainty about how to administer the upcoming primary. *See* SAC ¶ 57. The infirmities of this claim are evident. First, once again the grievance is highly generalized. *See Bognet*, 980 F.3d at 351. The Supreme Court has rejected standing based on undifferentiated grievances or abstract policy statements, *Gill v. Whitford*, 138 S. Ct. 1916, 1931 (2018), such as an interest in overseeing the lawful administration of elections, as Hall alleges here. *See* SAC ¶ 57. Second, there is no uncertainty as to how to proceed—other than of Plaintiffs’ own making—because the 2022 Congressional Map has been adopted, and Hall is legally required to implement it.

³ Indeed, regardless of how a congressional map is adopted, Bashir is not “forced” into any particular district or election and has no entitlement to or reason to expect a district that aligns with his election prospects. Nothing in the Pennsylvania Supreme Court’s decision precludes Bashir—or any other candidate—from running for election in any district he wants.

B. Plaintiffs do not meet the requirements for prudential standing.

Even if any Plaintiff had suffered an injury sufficient for Article III purposes, their claim would still be barred under prudential standing, as it is premised on the *General Assembly's* alleged exclusive authority to draw congressional districts. *See* SAC ¶¶ 60-61. Prudential limitations require “that a party ‘generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.’” *Kowalski*, 543 U.S. at 129 (quoting *Warth*, 422 U.S. at 499). But Plaintiffs’ claims rest entirely on the alleged usurpation of institutional rights held by the General Assembly, which is not before the Court and whose interests cannot be advanced by individuals lacking authority to act on its behalf.

Plaintiffs have also failed to identify any “‘hindrance’ to the [General Assembly’s] ability to protect [its] own interests,” *id.* at 130 (quoting *Powers v. Ohio*, 499 U.S. 400, 411 (1991)). “Absent a ‘hindrance’ to the third-party’s ability to defend its own rights, this prudential limitation on standing cannot be excused.” *Corman*, 287 F. Supp. 3d at 572 (quoting *Kowalski*, 543 U.S. at 130). Thus, applying the “usual rule” of prudential standing, *Virginia v. Am. Booksellers Ass’n Inc.*, 484 U.S. 383, 392 (1988), Plaintiffs cannot assert claims on behalf of the General Assembly. *Corman*, 287 F. Supp. 3d at 571-73. For these reasons, Plaintiffs have failed to demonstrate that they have standing, and their Elections Clause claims must be dismissed. *See id.*

II. The Court should dismiss Plaintiffs’ Elections Clause claims because Plaintiffs’ request for relief is moot or, in the alternative, Plaintiffs fail to state a claim upon which relief may be granted.

This Court should dismiss Plaintiffs’ Elections Clause claims (Claims 1 and 2 of the Second Amended Complaint) because they are now moot. “The mootness doctrine is centrally concerned with the court’s ability to grant effective relief: If developments occur during the course of adjudication that . . . prevent a court from being able to grant the requested relief, the case must be dismissed as moot.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 596 (3d Cir. 2010)). Plaintiffs argue that Defendants must hold at-large elections pursuant to 2 U.S.C. § 2a(c)(5). However, the Supreme Court unequivocally stated in *Branch v. Smith* that § 2a(c)(5) is to be used only as a last resort and “inapplicable *unless* the state legislature, *and* state . . . courts, have all failed to redistrict pursuant to § 2c.” 538 U.S. 254, 275 (2003) (emphasis in original).

The last-resort remedy of § 2a(c)(5) is available only when, “on the eve of a congressional election, no constitutional redistricting plan exists and there is no time for either the State’s legislature *or the courts* to develop one.” *Id.* at 275 (emphasis added). Here, the Pennsylvania Supreme Court has already adopted a lawful congressional plan and State Defendants have already implemented that plan, in accordance with 2 U.S.C. § 2c and U.S. Supreme Court precedent. Therefore, “§2a(c) cannot be properly applied” because the state “court[] . . . effect[ed] the

redistricting mandated by § 2c.” *Id.* As a result, the Court cannot “grant the requested relief,” so “the case must be dismissed as moot.” *Ehrheart*, 609 F.3d at 596.

Branch also squarely forecloses Plaintiffs’ claims that only the state legislature and not Pennsylvania state courts may redistrict. The Court in *Branch* specifically held that 2 U.S.C. § 2c authorizes both state and federal courts “to redistrict” and “embraces action by state and federal courts when the prescribed legislative action has not been forthcoming.” 538 U.S. at 270, 272. As the Supreme Court explained, “[Section] 2c is as readily enforced by courts as it is by state legislatures.” *Id.* at 272. The Court reaffirmed this in *Arizona State Legislature v. Arizona Independent Redistricting Committee*. Under § 2a(c), “Congress expressly directed that when a State has been ‘redistricted in the manner provided by [state] law’—whether by the legislature, *court decree*, or a commission established by the people’s exercise of the initiative—the resulting districts are the ones that presumptively will be used to elect Representatives.” 576 U.S. at 812 (quoting *Branch*, 538 U.S. at 274; emphasis added).

Indeed, the Supreme Court has been clear that not only *may* state courts step in when the legislative process results in impasse over congressional plans, but they *should* do so. As the Court explained in *Grove v. Emison*, “[t]he power of the judiciary of a State to require valid reapportionment or 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.” 507 U.S. at 33 (quotations omitted). In recognizing the state courts’ role to craft remedial plans, the unanimous Court held that “[t]he District Court erred in not deferring to the state court’s efforts to redraw Minnesota’s . . . federal congressional districts.” *Id.* at 42. Far from restricting apportionment responsibilities to a state’s legislative branch alone, the Court affirmed that congressional reapportionment may be conducted “through [a state’s] legislative *or* judicial branch.” *Id.* at 33 (emphasis in original). As a result, the Court found that the state court’s “issuance of its plan (conditioned on the legislature’s failure to enact a constitutionally acceptable plan)” by a date certain was “precisely the sort of state judicial supervision of redistricting [the Court] has encouraged.” *Id.* Thus, the Supreme Court was clear in *Grove* that the district court erred in “ignoring the . . . legitimacy of state *judicial* redistricting.” *Id.* at 34 (emphasis in original). The Court should decline Plaintiffs’ invitation to make the same mistake here.

Plaintiffs are also mistaken that courts may not alter election-related deadlines, which they can and routinely do. *See, e.g.,* Order, *Harper v. Hall*, No. 413P21 (N.C. Dec. 8, 2021) (postponing 2022 primary filing deadlines months before primary); Order, *In the Matter of 2022 Legislative Districting of the State*, Misc. Nos. 21, 24, 25, 26, 27 (Md. Feb. 11, 2022) (postponing candidate filing and related deadlines months before 2022 primaries). Particularly where federal law

strongly encourages state courts to implement congressional plans when the political branches fail to act, judicial modification of election deadlines to effectuate those maps is not only authorized, but essential.

CONCLUSION

For the foregoing reasons, the Court should grant the Carter Petitioners' Motion to Dismiss Claim 1 and Claim 2 of the Plaintiffs' Second Amended Complaint.

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Dated: March 1, 2022

Respectfully submitted,

/s/ Elizabeth V. Wingfield

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**Motions for Pro Hac Vice
Forthcoming*

***Admitted Pro Hac Vice*

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing contains 4,647 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: March 1, 2022

/s/ Elizabeth V. Wingfield
Elizabeth V. Wingfield

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Exhibit A

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IN THE SUPREME COURT OF PENNSYLVANIA

No. 7 MM 2022

CAROL ANN CARTER *et al.*,
Petitioners,

v.

LEIGH M. CHAPMAN, *et al.*,
Respondents.

**RESPONDENTS' CERTIFICATION OF COMPLIANCE PURSUANT TO
ORDER DATED FEBRUARY 23, 2022**

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
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(additional counsel on signature pages)

Respondents, the Acting Secretary of the Commonwealth and Director of the Bureau of Election Services and Notaries, respectfully submit this Certification in response to the Court's Order dated February 23, 2022 (the "Order").

The Order directed that "the Pennsylvania primary and general elections for seats in the United States House of Representatives commencing in the year 2022 shall be conducted in accordance with the 'Carter Plan' submitted in the record before the Special Master and as described by 2020 Census block equivalency ... and ESRI shape files uploaded to th[e] Court's website." The Order further directed "Executive Respondents together with the General Assembly's Legislative Data Processing Center (LDPC)" to "prepare textual language that describes the Carter Plan and submit the same to the Secretary of the Commonwealth without delay." The Order directed the Acting Secretary of the Commonwealth thereafter to "file with th[e] Court's Prothonotary a certification of compliance of the preparation of the textual description of the Carter Plan, along with a copy of the textual description."

Respondents, including the Acting Secretary of the Commonwealth, hereby certify that, in compliance with the Court's Order, the General Assembly's Legislative Data Processing Center has prepared a textual description of the Carter Plan, and that a true and correct copy of that textual description is attached as Exhibit A hereto.

Respondents further state that they do not foresee any technical issues concerning the implementation of the Carter Plan.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: February 25, 2022

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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 25, 2022

/s/ Robert A. Wiygul

Robert A. Wiygul

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EXHIBIT “A”

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LEGISLATIVE DATA PROCESSING CENTER

COMPOSITE LISTING

OF

CONGRESSIONAL DISTRICTS

<u>DISTRICT NUMBER</u>	<u>DESCRIPTION</u>
Dist. 01	<p>BUCKS and MONTGOMERY Counties.</p> <p>All of BUCKS County and Part of MONTGOMERY County consisting of the TOWNSHIPS of Franconia, Hatfield, Horsham (PART, Districts 01, 02 [PART, Divisions 01, 02 and 03], 03 [PART, Divisions 01, 02, 04 and 05] and 04 [PART, Divisions 01 (only blocks 3006, 3007, 3008, 3010, 3011 and 3020 of tract 200505), 02, 03 and 04]), Marlborough, Montgomery, Salford and Upper Hanover and the BOROUGHs of East Greenville, Hatfield, Pennsburg, Red Hill, Souderton and Telford (Montgomery County Portion).</p> <p>Total population: 764,866</p>
Dist. 02	<p>PHILADELPHIA County.</p> <p>Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 05 [PART, Divisions 01, 02, 03, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37], 07, 14, 16 [PART, Division 05], 18, 19, 20, 23, 25, 31, 33, 35, 37, 41, 42, 43, 45, 49, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65 and 66).</p> <p>Total population: 764,865</p>

Dist. 03 PHILADELPHIA County.

Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 01, 02, 03 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20], 04, 05 [PART, Divisions 04, 18 and 19], 06, 08, 09, 10, 11, 12, 13, 15, 16 [PART, Divisions 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17 and 18], 17, 21, 22, 24, 26 [PART, Divisions 08, 10, 11, 12, 16, 17, 19, 21 and 22], 27, 28, 29, 30, 32, 34, 36, 38, 39 [PART, Divisions 01, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 31, 32, 34, 35, 37, 38, 40, 42, 43, 45 and 46], 44, 46, 47, 48, 50, 51 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 26 and 28], 52, 59 and 60).

Total population: 764,864

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Dist. 04 BERKS and MONTGOMERY Counties.

Part of BERKS County consisting of the TOWNSHIPS of Alsace, Amity, Bern, Colebrookdale, District, Douglass, Earl, Exeter (PART, Precinct 10 (all blocks except 1008, 1011, 1014 and 1024 of tract 012103 and blocks 3000, 3001, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018 and 3019 of tract 012106)), Greenwich, Hereford, Longswamp, Lower Heidelberg (PART, Precincts 02 and 03), Maiden creek, Maxatawny, Muhlenberg, Oley, Ontelaunee, Perry (all blocks except 1003, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1050, 1051, 1052 and 3022 of tract 013702), Pike, Richmond, Rockland, Ruscombmanor and Washington and the BOROUGHS of Bally, Bechtelsville, Boyertown, Fleetwood, Kutztown, Laureldale, Leesport, Lenhartsville, Lyons and Topton and Part of MONTGOMERY County consisting of the TOWNSHIPS of Abington, Cheltenham, Douglass, East Norriton, Horsham (PART, Districts 02 [PART, Division 04], 03 [PART, Division 03] and 04 [PART, Division 01 (all blocks except 3006, 3007, 3008, 3010, 3011 and 3020 of tract 200505)]), Limerick, Lower Frederick, Lower Gwynedd, Lower Merion (PART, Wards 01, 02, 03, 06 [PART, Division 03], 09, 11 [PART, Division 03 (all blocks except 3011B of tract 204900)], 12 [PART, Division 03 (only blocks 2000, 2001, 2025 and 2028 of tract 204500)] and 13), Lower Moreland, Lower Pottsgrove, Lower Providence, Lower Salford, New Hanover, Perkiomen, Plymouth, Skippack, Springfield, Towamencin, Upper Dublin, Upper Frederick, Upper Gwynedd, Upper Merion (PART, District Belmont [PART, Division 05]), Upper Moreland, Upper Pottsgrove, Upper Providence, Upper Salford, West Norriton, West Pottsgrove, Whitemarsh, Whitpain and Worcester and the BOROUGHS of Ambler, Bryn Athyn, Collegeville, Conshohocken, Green Lane, Hatboro, Jenkintown, Lansdale, North Wales, Pottstown, Rockledge, Royersford, Schwenksville, Trappe and West Conshohocken.

Total population: 764,865

Dist. 05 CHESTER, DELAWARE, MONTGOMERY and PHILADELPHIA
Counties.

Part of CHESTER County consisting of the TOWNSHIP of
Birmingham (PART, Precinct 02 (only blocks 2021 and
2022 of tract 303100)); All of DELAWARE County; Part
of MONTGOMERY County consisting of the TOWNSHIPS of
Lower Merion (PART, Wards 04, 05, 06 [PART, Divisions
01 and 02], 07, 08, 10, 11 [PART, Divisions 01, 02
and 03 (only block 3011B of tract 204900)], 12 [PART,
Divisions 01, 02 and 03 (all blocks except 2000, 2001,
2025 and 2028 of tract 204500)] and 14) and Upper
Merion (PART, Districts Belmont [PART, Divisions 01,
02, 03 and 04], Candlebrook, Gulph, King, Roberts,
Swedeland, Swedesburg and Town Center) and the
BOROUGHs of Bridgeport, Narberth and Norristown and
Part of PHILADELPHIA County consisting of the CITY of
Philadelphia (PART, Wards 03 [PART, Divisions 21 and
22], 26 [PART, Divisions 01, 02, 03, 04, 05, 06, 07,
09, 13, 14, 15, 18, 20 and 23], 39 [PART, Divisions
02, 13, 14, 17, 24, 29, 33, 36, 39, 41 and 44], 40
and 51 [PART, Divisions 21, 24, 25 and 27])).
Total population: 764,866

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Dist. 06 BERKS and CHESTER Counties.

Part of BERKS County consisting of the CITY of Reading and the TOWNSHIPS of Brecknock, Caernarvon, Cumru, Exeter (PART, Precincts 01, 02, 03, 04, 05, 06, 07, 08, 09, 10 (only blocks 1008, 1011, 1014 and 1024 of tract 012103 and blocks 3000, 3001, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018 and 3019 of tract 012106) and 11), Lower Alsace, Robeson, Spring and Union and the BOROUGHs of Adamstown (Berks County Portion), Birdsboro, Kenhorst, Mohnton, Mount Penn, New Morgan, Shillington, Sinking Spring, St. Lawrence, West Reading and Wyomissing and Part of CHESTER County consisting of the CITY of Coatesville and the TOWNSHIPS of Birmingham (PART, Precincts 01 and 02 (all blocks except 2021 and 2022 of tract 303100)), Caln, Charlestown, East Bradford, East Brandywine, East Caln, East Coventry, East Fallowfield, East Goshen, East Marlborough, East Nantmeal, East Nottingham, East Pikeland, East Vincent, East Whiteland, Easttown, Elk, Franklin, Highland, Honey Brook, Kennett, London Britain, London Grove, Londonderry, Lower Oxford, New Garden, New London, Newlin, North Coventry, Penn, Pennsbury, Pocopson, Sadsbury, Schuylkill, South Coventry, Thornbury, Tredyffrin, Upper Oxford, Upper Uwchlan, Uwchlan, Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Fallowfield, West Goshen, West Marlborough, West Nantmeal, West Nottingham, West Pikeland, West Sadsbury, West Vincent, West Whiteland, Westtown and Willistown and the BOROUGHs of Atglen, Avondale, Downingtown, Elverson, Honey Brook, Kennett Square, Malvern, Modena, Oxford, Parkesburg, Phoenixville, South Coatesville, Spring City, West Chester and West Grove.

Total population: 764,864

Dist. 07 CARBON, LEHIGH, MONROE and NORTHAMPTON Counties.
All of CARBON County; All of LEHIGH County; Part of
MONROE County consisting of the TOWNSHIPS of Eldred,
Polk and Ross (all blocks except 1000, 1001, 1002,
1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011,
1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020,
1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029,
1030, 1031, 1032, 1033, 1034, 2000, 2001, 2002, 2003,
2021, 3001, 3003, 3004, 3005, 4000, 4001, 4002, 4003,
4004, 4005, 4006, 4007, 4009, 4010 and 4011 of tract
301203) and All of NORTHAMPTON County.
Total population: 764,865

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Dist. 08 LACKAWANNA, LUZERNE, MONROE, PIKE and WAYNE Counties.
All of LACKAWANNA County; Part of LUZERNE County
consisting of the CITIES of Hazleton, Nanticoke,
Pittston and Wilkes-Barre and the TOWNSHIPS of Bear
Creek, Buck, Butler (PART, Districts 01, 02, 03, 04
and 05 (only blocks 1024, 1025, 2013, 2014, 2015 and
2020 of tract 216601 and blocks 1016, 1017, 1024,
1046, 1047, 1049, 1050, 1058, 1059, 1060, 1061, 1062,
1063 and 1064 of tract 216602)), Dallas, Dennison,
Exeter, Fairview, Foster, Franklin, Hanover, Hazle,
Jackson, Jenkins, Kingston, Newport (PART, Ward 02),
Pittston, Plains, Plymouth, Rice, Wilkes-Barre and
Wright and the BOROUGHS of Ashley, Avoca, Bear Creek
Village, Courtdale, Dupont, Duryea, Edwardsville,
Exeter, Forty Fort, Freeland, Harveys Lake,
Hughestown, Jeddo, Kingston, Laflin, Larksville,
Laurel Run, Luzerne, Nuangola, Penn Lake Park,
Plymouth, Pringle, Sugar Notch, Swoyersville, Warrior
Run, West Hazleton, West Pittston, West Wyoming, White
Haven, Wyoming and Yatesville; Part of MONROE County
consisting of the TOWNSHIPS of Barrett, Chestnuthill,
Coolbaugh, Hamilton, Jackson, Middle Smithfield,
Paradise, Pocono, Price, Ross (only blocks 1000, 1001,
1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010,
1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019,
1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028,
1029, 1030, 1031, 1032, 1033, 1034, 2000, 2001, 2002,
2003, 2021, 3001, 3003, 3004, 3005, 4000, 4001, 4002,
4003, 4004, 4005, 4006, 4007, 4009, 4010 and 4011 of
tract 301203), Smithfield, Stroud, Tobyhanna and
Tunkhannock and the BOROUGHS of Delaware Water Gap,
East Stroudsburg, Mount Pocono and Stroudsburg; All
of PIKE County and All of WAYNE County.
Total population: 764,866

Dist. 09 BERKS, BRADFORD, COLUMBIA, LEBANON, LUZERNE,
LYCOMING, MONTOUR, NORTHUMBERLAND, SCHUYLKILL,
SULLIVAN, SUSQUEHANNA and WYOMING Counties.
Part of BERKS County consisting of the TOWNSHIPS of
Albany, Bethel, Centre, Heidelberg, Jefferson, Lower
Heidelberg (PART, Precinct 01), Marion, North
Heidelberg, Penn, Perry (only blocks 1003, 1008, 1009,
1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018,
1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027,
1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036,
1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045,
1046, 1050, 1051, 1052 and 3022 of tract 013702),
South Heidelberg, Tilden, Tulpehocken, Upper Bern,
Upper Tulpehocken and Windsor and the BOROUGHs of
Bernville, Centerport, Hamburg, Robesonia,
Shoemakersville, Wernersville and Womelsdorf; All of
BRADFORD County; All of COLUMBIA County; All of
LEBANON County; Part of LUZERNE County consisting of
the TOWNSHIPS of Black Creek, Butler (PART, District
05 (all blocks except 1024, 1025, 2013, 2014, 2015
and 2020 of tract 216601 and blocks 1016, 1017, 1024,
1046, 1047, 1049, 1050, 1058, 1059, 1060, 1061, 1062,
1063 and 1064 of tract 216602)), Conyngham, Dorrance,
Fairmount, Hollenback, Hunlock, Huntington, Lake,
Lehman, Nescopeck, Newport (PART, Ward 01), Ross,
Salem, Slocum, Sugarloaf and Union and the BOROUGHs
of Conyngham, Dallas, Nescopeck, New Columbus and
Shickshinny; Part of LYCOMING County consisting of
the CITY of Williamsport (PART, Wards 01, 02, 03, 04,
05 (all blocks except 1034, 1035, 1036, 1042, 1043,
1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052,
1053, 1055, 1056, 1057, 2073, 2074, 2075, 2076, 2077,
2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086,
2087, 2088 and 2089 of tract 000900), 06, 07, 08, 09,
10, 11, 12 and 13) and the TOWNSHIPS of Clinton,
Eldred, Fairfield, Franklin, Jordan, Loyalsock, Mill
Creek, Moreland, Muncy, Muncy Creek, Penn, Plunketts
Creek, Shrewsbury, Upper Fairfield and Wolf and the
BOROUGHs of Hughesville, Montgomery, Montoursville,
Muncy and Picture Rocks; All of MONTOUR County; All
of NORTHUMBERLAND County; All of SCHUYLKILL County;
All of SULLIVAN County; All of SUSQUEHANNA County and
All of WYOMING County.
Total population: 764,864

Dist. 10 CUMBERLAND, DAUPHIN and YORK Counties.
Part of CUMBERLAND County consisting of the TOWNSHIPS of Cooke, Dickinson, East Pennsboro, Hampden, Lower Allen, Lower Frankford, Middlesex, Monroe, North Middleton, North Newton (only blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1010, 1011, 1012, 1013, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1033, 1034, 1035, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1045, 1066, 1067, 1070 and 1071 of tract 012802), Penn, Silver Spring, South Middleton, South Newton, Upper Allen and West Pennsboro and the BOROUGHs of Camp Hill, Carlisle, Lemoyne, Mechanicsburg, Mount Holly Springs, New Cumberland, Newville, Shiremanstown and Wormleysburg; All of DAUPHIN County and Part of YORK County consisting of the CITY of York and the TOWNSHIPS of Carroll, Conewago, Dover, East Manchester, Fairview, Franklin, Jackson (PART, Precincts 01 (all blocks except 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 3008, 3009, 3015, 3016, 3019, 3020, 3021, 3022, 3023, 3024, 3025, 3026, 3027, 3028, 3029, 3030 and 3031 of tract 020522 and blocks 2031 and 2032 of tract 020524) and 02), Manchester, Monaghan, Newberry, Spring Garden, Springettsbury, Warrington, Washington and West Manchester and the BOROUGHs of Dillsburg, Dover, Franklintown, Goldsboro, Lewisberry, Manchester, Mount Wolf, North York, Wellsville, West York and York Haven.
Total population: 764,864

Dist. 11 LANCASTER and YORK Counties.
All of LANCASTER County and Part of YORK County
consisting of the TOWNSHIPS of Chanceford, Codorus,
East Hopewell, Fawn, Heidelberg, Hellam, Hopewell,
Jackson (PART, Precinct 01 (only blocks 2019, 2020,
2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029,
3008, 3009, 3015, 3016, 3019, 3020, 3021, 3022, 3023,
3024, 3025, 3026, 3027, 3028, 3029, 3030 and 3031 of
tract 020522 and blocks 2031 and 2032 of tract
020524)), Lower Chanceford, Lower Windsor, Manheim,
North Codorus, North Hopewell, Paradise, Peach Bottom,
Penn, Shrewsbury, Springfield, West Manheim, Windsor
and York and the BOROUGHs of Cross Roads, Dallastown,
Delta, East Prospect, Fawn Grove, Felton, Glen Rock,
Hallam, Hanover, Jacobus, Jefferson, Loganville, New
Freedom, New Salem, Railroad, Red Lion, Seven Valleys,
Shrewsbury, Spring Grove, Stewartstown, Windsor,
Winterstown, Wrightsville, Yoe and Yorkana.
Total population: 764,864

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Dist. 12 ALLEGHENY and WESTMORELAND Counties.
Part of ALLEGHENY County consisting of the CITIES of Clairton, Duquesne, McKeesport and Pittsburgh and the TOWNSHIPS of Elizabeth, Forward, North Versailles, South Park, South Versailles, Upper St. Clair and Wilkins and the BOROUGHS of Baldwin, Bethel Park, Braddock, Brentwood, Bridgeville, Chalfant, Dravosburg, East McKeesport, East Pittsburgh, Elizabeth, Glassport, Homestead, Jefferson Hills, Liberty, Lincoln, Monroeville, Mount Oliver, Munhall, North Braddock, Pitcairn, Pleasant Hills, Plum, Port Vue, Rankin, Swissvale (PART, Districts 01, 02 (only blocks 2014, 2015, 3007, 3008, 3009 and 3010 of tract 515100), 06, 07, 08, 09, 10 and 11), Trafford (Allegheny County Portion), Turtle Creek, Versailles, Wall, West Elizabeth, West Homestead, West Mifflin, Whitaker, White Oak, Whitehall and Wilmerding and Part of WESTMORELAND County consisting of the CITY of Jeannette and the TOWNSHIPS of Hempfield (PART, Districts East Adamsburg, High Park, Lincoln Heights West, Middletown (all blocks except 1000, 1001, 1004, 1009, 1010, 1011, 1020, 1021, 1022, 1026, 1027 and 1055 of tract 804701, blocks 1015, 2018 and 2019 of tract 804804 and blocks 2000, 2002, 2003 and 2004 of tract 804901), Wegley, Wendel Herm and West Hempfield), North Huntingdon, Penn, Sewickley and South Huntingdon (PART, District Yukon) and the BOROUGHS of Adamsburg, Arona, Export, Irwin, Madison, Manor, Murrysburg, North Irwin, Penn, Sutersville and Trafford (Westmoreland County Portion).
Total population: 764,864

Dist. 13 ADAMS, BEDFORD, BLAIR, CAMBRIA, CUMBERLAND, FRANKLIN, FULTON, HUNTINGDON, JUNIATA, MIFFLIN, PERRY and SOMERSET Counties.

All of ADAMS County; All of BEDFORD County; All of BLAIR County; All of CAMBRIA County; Part of CUMBERLAND County consisting of the TOWNSHIPS of Hopewell, Lower Mifflin, North Newton (all blocks except 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1010, 1011, 1012, 1013, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1033, 1034, 1035, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1045, 1066, 1067, 1070 and 1071 of tract 012802), Shippensburg, Southampton, Upper Frankford and Upper Mifflin and the BOROUGHs of Newburg and Shippensburg (Cumberland County Portion); All of FRANKLIN County; All of FULTON County; All of HUNTINGDON County; All of JUNIATA County; All of MIFFLIN County; All of PERRY County and Part of SOMERSET County consisting of the TOWNSHIP of Conemaugh (PART, District 02 (all blocks except 1026 of tract 020101)).

Total population: 764,864

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Dist. 14 FAYETTE, GREENE, INDIANA, SOMERSET, WASHINGTON and WESTMORELAND Counties.
All of FAYETTE County; All of GREENE County; Part of INDIANA County consisting of the TOWNSHIPS of Armstrong, Blacklick, Brush Valley, Buffington, Burrell, Center, Cherryhill, Conemaugh, East Wheatfield, Green, Pine, Rayne, South Mahoning (PART, District 01 (all blocks except 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2042, 2043, 2044, 3000 and 3001 of tract 960200)), Washington, West Wheatfield, White and Young and the BOROUGHS of Armagh, Blairsville, Cherry Tree, Clymer, Creekside, Ernest, Homer City, Indiana, Plumville, Saltsburg and Shelocta; Part of SOMERSET County consisting of the TOWNSHIPS of Addison, Allegheny, Black, Brothersvalley, Conemaugh (PART, Districts 01, 02 (only block 1026 of tract 020101), 03, 04 and 05), Elk Lick, Fairhope, Greenville, Jefferson, Jenner, Larimer, Lincoln, Lower Turkeyfoot, Middlecreek, Milford, Northampton, Ogle, Paint, Quemahoning, Shade, Somerset, Southampton, Stonycreek, Summit and Upper Turkeyfoot and the BOROUGHS of Addison, Benson, Berlin, Boswell, Callimont, Casselman, Central City, Confluence, Garrett, Hooversville, Indian Lake, Jennerstown, Meyersdale, New Baltimore, New Centerville, Paint, Rockwood, Salisbury, Seven Springs (Somerset County Portion), Shanksville, Somerset, Stoystown, Ursina, Wellersburg and Windber; All of WASHINGTON County and Part of WESTMORELAND County consisting of the CITIES of Arnold, Greensburg, Latrobe, Lower Burrell, Monessen and New Kensington and the TOWNSHIPS of Allegheny, Bell, Cook, Derry, Donegal, East Huntingdon, Fairfield, Hempfield (PART, Districts Alwine, Bovard, Carbon, Eastview, Fort Allen, Foxhill, Gayville, Grapeville, Hannastown, Haydenville, Lincoln Heights, Luxor, Maplewood, Middletown (only blocks 1000, 1001, 1004, 1009, 1010, 1011, 1020, 1021, 1022, 1026, 1027 and 1055 of tract 804701, blocks 1015, 2018 and 2019 of tract 804804 and blocks 2000, 2002, 2003 and 2004 of tract 804901), New Stanton, North Carbon, Sibel, Todd, University, Valley, Weavers Old Stand and West Point), Ligonier, Loyalhanna, Mount Pleasant, Rostraver, Salem, South Huntingdon (PART, Districts

Hixon, Jacobs Creek, Mineral, Port Royal, South Huntingdon, Wayne and Wyano), St. Clair, Unity, Upper Burrell and Washington and the BOROUGHs of Avonmore, Bolivar, Delmont, Derry, Donegal, East Vandergrift, Hunker, Hyde Park, Laurel Mountain, Ligonier, Mount Pleasant, New Alexandria, New Florence, New Stanton, North Belle Vernon, Oklahoma, Scottdale, Seward, Smithton, South Greensburg, Southwest Greensburg, Vandergrift, West Leechburg, West Newton, Youngstown and Youngwood.

Total population: 764,866

RETRIEVED FROM DEMOCRACYDOCKET.COM

Dist. 15 ARMSTRONG, CAMERON, CENTRE, CLARION, CLEARFIELD, CLINTON, ELK, FOREST, INDIANA, JEFFERSON, LYCOMING, MCKEAN, POTTER, SNYDER, TIOGA, UNION, VENANGO and WARREN Counties.

All of ARMSTRONG County; All of CAMERON County; All of CENTRE County; All of CLARION County; All of CLEARFIELD County; All of CLINTON County; All of ELK County; All of FOREST County; Part of INDIANA County consisting of the TOWNSHIPS of Banks, Canoe, East Mahoning, Grant, Montgomery, North Mahoning, South Mahoning (PART, District 01 (only blocks 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2042, 2043, 2044, 3000 and 3001 of tract 960200)) and West Mahoning and the BOROUGHS of Glen Campbell, Marion Center and Smicksburg; All of JEFFERSON County; Part of LYCOMING County consisting of the CITY of Williamsport (PART, Ward 05 (only blocks 1034, 1035, 1036, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1055, 1056, 1057, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088 and 2089 of tract 000900)) and the TOWNSHIPS of Anthony, Armstrong, Bastress, Brady, Brown, Cascade, Cogan House, Cummings, Gamble, Hepburn, Jackson, Lewis, Limestone, Lycoming, McHenry, McIntyre, McNett, Mifflin, Nippenose, Old Lycoming, Piatt, Pine, Porter, Susquehanna, Washington, Watson and Woodward and the BOROUGHS of Duboistown, Jersey Shore, Salladasburg and South Williamsport; All of MCKEAN County; All of POTTER County; All of SNYDER County; All of TIOGA County; All of UNION County; Part of VENANGO County consisting of the CITY of Oil City and the TOWNSHIPS of Allegheny, Cherrytree, Clinton, Cornplanter, Cranberry, Oakland, Oil Creek, Pinegrove, Plum, President, Richland, Rockland, Scrubgrass and Victory (only blocks 1045, 1046, 1047, 1048, 1050, 1051, 1053, 1058, 1059 and 1060 of tract 201400) and the BOROUGHS of Clintonville, Emlenton (Venango County Portion), Pleasantville and Rouseville and All of WARREN County.

Total population: 764,864

- Dist. 16 BUTLER, CRAWFORD, ERIE, LAWRENCE, MERCER and VENANGO Counties.
All of BUTLER County; All of CRAWFORD County; All of ERIE County; All of LAWRENCE County; All of MERCER County and Part of VENANGO County consisting of the CITY of Franklin and the TOWNSHIPS of Canal, Frenchcreek, Irwin, Jackson, Mineral, Sandycreek and Victory (all blocks except 1045, 1046, 1047, 1048, 1050, 1051, 1053, 1058, 1059 and 1060 of tract 201400) and the BOROUGHs of Barkeyville, Cooperstown, Polk, Sugarcreek and Utica.
Total population: 764,865
- Dist. 17 ALLEGHENY and BEAVER Counties.
Part of ALLEGHENY County consisting of the TOWNSHIPS of Aleppo, Baldwin, Collier, Crescent, East Deer, Fawn, Findlay, Frazer, Hampton, Harnar, Harrison, Indiana, Kennedy, Kilbuck, Leet, Marshall, McCandless, Moon, Mount Lebanon, Neville, North Fayette, O'Hara, Ohio, Penn Hills, Pine, Reserve, Richland, Robinson, Ross, Scott, Shaler, South Fayette, Springdale, Stowe and West Deer and the BOROUGHs of Aspinwall, Avalon, Bell Acres, Bellevue, Ben Avon, Ben Avon Heights, Blawnox, Brackenridge, Braddock Hills, Bradford Woods, Carnegie, Castle Shannon, Cheswick, Churchill, Coraopolis, Crafton, Dormont, Edgewood, Edgeworth, Emsworth, Etna, Forest Hills, Fox Chapel, Franklin Park, Glen Osborne, Glenfield, Green Tree, Haysville, Heidelberg, Ingram, Leetsdale, McDonald (Allegheny County Portion), McKees Rocks, Millvale, Oakdale, Oakmont, Pennsbury Village, Rosslyn Farms, Sewickley, Sewickley Heights, Sewickley Hills, Sharpsburg, Springdale, Swissvale (PART, Districts 02 (all blocks except 2014, 2015, 3007, 3008, 3009 and 3010 of tract 515100), 03, 04 and 05), Tarentum, Thornburg, Verona, West View and Wilkinsburg and All of BEAVER County.
Total population: 764,864

Population of all districts: 13,002,700

The Statewide population = 13,002,700		
The Average population per district = 764,865		
DISTRICT	POPULATION	DEVIATION
1	764,866	+1 (0.00%)
2	764,865	+0 (0.00%)
3	764,864	-1 (0.00%)
4	764,865	+0 (0.00%)
5	764,866	+1 (0.00%)
6	764,864	-1 (0.00%)
7	764,865	+0 (0.00%)
8	764,866	+1 (0.00%)
9	764,864	-1 (0.00%)
10	764,864	-1 (0.00%)
11	764,864	-1 (0.00%)
12	764,864	-1 (0.00%)
13	764,864	-1 (0.00%)
14	764,866	+1 (0.00%)
15	764,864	-1 (0.00%)
16	764,865	+0 (0.00%)
17	764,864	-1 (0.00%)

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LEGISLATIVE DATA PROCESSING CENTER

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PAGE 1

COUNTIES SPLIT BY CONGRESSIONAL DISTRICTS

14 TOTAL COUNTIES

17 TOTAL SPLITS

ALLEGHENY

012 017

BERKS

004 006 009

CHESTER

005 006

CUMBERLAND

010 013

INDIANA

014 015

LUZERNE

008 009

LYCOMING

009 015

MONROE

007 008

MONTGOMERY

001 004 005

PHILADELPHIA

002 003 005

SOMERSET

013 014

VENANGO

015 016

WESTMORELAND

012 014

YORK

010 011

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02/25/2022

PAGE 1

PLACES SPLIT BY CONGRESSIONAL DISTRICTS

20 TOTAL PLACES

21 TOTAL SPLITS

ALLEGHENY COUNTY

SWISSVALE	BOROUGH	012 017
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BERKS COUNTY

EXETER	TOWNSHIP	004 006
LOWER HEIDELBERG	TOWNSHIP	004 009
PERRY	TOWNSHIP	004 009

CHESTER COUNTY

BIRMINGHAM	TOWNSHIP	005 006
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CUMBERLAND COUNTY

NORTH NEWTON	TOWNSHIP	010 013
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INDIANA COUNTY

SOUTH MAHONING	TOWNSHIP	014 015
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LUZERNE COUNTY

BUTLER	TOWNSHIP	008 009
NEWPORT	TOWNSHIP	008 009

LYCOMING COUNTY

WILLIAMSPORT	CITY	009 015
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MONROE COUNTY

ROSS	TOWNSHIP	007 008
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MONTGOMERY COUNTY

HORSHAM	TOWNSHIP	001 004
LOWER MERION	TOWNSHIP	004 005
UPPER MERION	TOWNSHIP	004 005

PHILADELPHIA COUNTY

PHILADELPHIA	CITY	002 003 005
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SOMERSET COUNTY

CONEMAUGH	TOWNSHIP	013 014
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VENANGO COUNTY

VICTORY	TOWNSHIP	015 016
---------	----------	---------

PLACES SPLIT BY CONGRESSIONAL DISTRICTS

WESTMORELAND COUNTY

HEMPFIELD	TOWNSHIP	012 014
SOUTH HUNTINGDON	TOWNSHIP	012 014

YORK COUNTY

JACKSON	TOWNSHIP	010 011
---------	----------	---------

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02/25/2022

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WARDS SPLIT BY CONGRESSIONAL DISTRICTS

22 TOTAL WARDS

22 TOTAL SPLITS

ALLEGHENY COUNTY

SWISSVALE

BOROUGH

WARD 02

012 017

BERKS COUNTY

EXETER

TOWNSHIP

WARD 10

004 006

CHESTER COUNTY

BIRMINGHAM

TOWNSHIP

WARD 02

005 006

INDIANA COUNTY

SOUTH MAHONING

TOWNSHIP

WARD 01

014 015

LUZERNE COUNTY

BUTLER

TOWNSHIP

WARD 05

008 009

LYCOMING COUNTY

WILLIAMSPORT

CITY

WARD 05

009 015

MONTGOMERY COUNTY

HORSHAM

TOWNSHIP

WARD 02

001 004

WARD 03

001 004

WARD 04

001 004

LOWER MERION

TOWNSHIP

WARD 06

004 005

WARD 11

004 005

WARD 12

004 005

UPPER MERION

TOWNSHIP

WARD BELMONT

004 005

PHILADELPHIA COUNTY

PHILADELPHIA

CITY

WARD 03

003 005

WARD 05

002 003

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WARDS SPLIT BY CONGRESSIONAL DISTRICTS

WARD 16	002 003
WARD 26	003 005
WARD 39	003 005
WARD 51	003 005

SOMERSET COUNTY

CONEMAUGH	TOWNSHIP	
WARD 02		013 014

WESTMORELAND COUNTY

HEMPFIELD	TOWNSHIP	
WARD MIDDLETOWN		012 014

YORK COUNTY

JACKSON	TOWNSHIP	
WARD 01		010 011

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Filed 2/25/2022 3:57:00 PM Supreme Court Middle District
7 MM 2022**IN THE SUPREME COURT OF PENNSYLVANIA**

Carol Ann Carter, Monica Parrilla, Rebecca : 7 MM 2022
Poyourow, William Tung, Roseanne Milazzo, Burt :
Siegel, Susan Cassanelli, Lee Cassanelli, Lynn :
Wachman, Michael Guttman, Maya Fonkeu, Brady :
Hill, Mary Ellen Balchunis, Tom DeWall, Stephanie
McNulty and Janet Temin, Petitioners

v.

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

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.

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

PROOF OF SERVICE

I hereby certify that this 25th day of February, 2022, I have served the attached document(s) to the persons on the
date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Service

Served: Anthony Michael Pratt
Service Method: eService
Email: prattam@pepperlaw.com
Service Date: 2/25/2022
Address: Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103
Phone: 215-981-4386
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: Anthony Richard Holtzman
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Email: anthony.holtzman@klgates.com
Service Date: 2/25/2022
Address: K&L Gates LLP
17 N. Second Street, 18th Floor
Harrisburg, PA 17101
Phone: 717--23-1-4500
Representing: Respondent Jake Corman
Respondent Kim Ward

Served: Clifford B. Levine
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Email: clifford.levine@dentons.com
Service Date: 2/25/2022
Address: Dentons Cohen & Grigsby P.C.
625 Liberty Avenue
Pittsburgh, PA 15222-3152
Phone: 412-297-4998
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: Corrie Allen Woods
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Email: cwoods@woodslawoffices.com
Service Date: 2/25/2022
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301 Grant Street
Coraopolis, PA 15219
Phone: 412-345-3198
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Daniel Thomas Brier
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Scranton, PA 18503
Phone: 570--34-2-6100
Representing: Respondent Joanna McClinton

Served: David Samuel Senoff
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Service Date: 2/25/2022
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Suite 300
Philadelphia, PA 19107
Phone: 215--25-8-4700
Representing: Respondent Joanna McClinton

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Email: dmisour@reedsmith.com
Service Date: 2/25/2022
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225 Fifth Avenue
Pittsburgh, PA 15222
Phone: 412-288-3091
Representing: Petitioner Philip T. Gressman, et al.

Served: Edward David Rogers
Service Method: eService
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Service Date: 2/25/2022
Address: 1735 Market Street
51st Floor
Philadelphia, PA 19103
Phone: 215-864-8144
Representing: Petitioner Carol Ann Carter, et al.

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Emma Frances Elizabeth Shoucair
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Service Date: 2/25/2022
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Pittsburgh, PA 15222
Phone: 412-417-1889
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: James Guthrie Mann
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Email: jmann@pahousegop.com
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P.O. Box 202228
Harrisburg, PA 17120
Phone: 717--78-3-1510
Representing: Respondent Bryan Cutler
Respondent Kerry Benninghoff

Served: Jeffry William Duffy
Service Method: eService
Email: jduffy@bakerlaw.com
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2929 Arch St., 12th Floor
Philadelphia, PA 19104
Phone: 215--56-4-2916
Representing: Respondent Bryan Cutler
Respondent Kerry Benninghoff

Served: Jonathan Richard Vaitl
Service Method: eService
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Service Date: 2/25/2022
Address: 17 N. 2nd Street
18th Floor
Harrisburg, PA 17101
Phone: 717--23-1-4500
Representing: Respondent Jake Corman
Respondent Kim Ward

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Joshua John Voss
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Service Date: 2/25/2022
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1717 Arch Street
Philadelphia, PA 19103
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Representing: Respondent Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, Bud Shuster (Congressional

Served: Kathleen Marie Kotula
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Email: kkotula@pa.gov
Service Date: 2/25/2022
Address: Room 306 North Office Building
401 North Street
Harrisburg, PA 17120-0500
Phone: (71-7) -783-0736
Representing: Respondent Bureau of Elections

Served: Kevin Michael Greenberg
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Address: 1717 Arch Street
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Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: Kim M. Watterson
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Address: 225 Fifth Avenue
Pittsburgh, PA 15222
Phone: 412--28-8-7996
Representing: Petitioner Philip T. Gressman, et al.

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

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Representing: Respondent Joanna McClinton

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1735 Market Street, 51st Floor
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Representing: Petitioner Carol Ann Carter, et al.

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Email: marco@arlawpitt.com
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Suite 2750
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Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: Matthew Hermann Haverstick
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Address: Three Logan Square, 5th Floor
1717 Arch Street
Philadelphia, PA 19103
Phone: 215-568-2000
Representing: Respondent Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, Bud Shuster (Congressio

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Matthew S. Salkowski
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Democratic Caucus, Office of Chief Counsel
Harrisburg, PA 17111
Phone: 717--78-7-3002
Representing: Respondent Joanna McClinton

Served: Michael R. McDonald
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Address: 1735 Market Street
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Phone: 215-864-8425
Representing: Petitioner Carol Ann Carter, et al.

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Representing: Petitioner Carol Ann Carter, et al.

Served: Robert Joseph Clark
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Email: clarkr@ballardspahr.com
Service Date: 2/25/2022
Address: Ballard Spahr
1735 Market Street, 51st Floor
Philadelphia, PA 19103
Phone: 215--86-4-8659
Representing: Petitioner Carol Ann Carter, et al.

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Samantha G. Zimmer
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Email: szimmer@kleinbard.com
Service Date: 2/25/2022
Address: Three Logan Square, 5th Floor
1717 Arch Street
Philadelphia, PA 19103
Phone: 267-443-4143
Representing: Respondent Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, Bud Shuster (Congressional

Served: Shannon Elise McClure
Service Method: eService
Email: smcclure@reedsmith.com
Service Date: 2/25/2022
Address: 1717 Arch Street
Suite 3100
Philadelphia, PA 19103
Phone: 215-241-7977
Representing: Petitioner Philip T. Gressman, et al.

Served: Shohin Hadizadeh Vance
Service Method: eService
Email: svance@kleinbard.com
Service Date: 2/25/2022
Address: Three Logan Square
1717 Arch Street, 5th Floor
Philadelphia, PA 19103
Phone: 267-443-4142
Representing: Respondent Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, Bud Shuster (Congressional

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

Served: Adam Craig Bonin
Service Method: eService
Email: adam@boninlaw.com
Service Date: 2/25/2022
Address: 121 S Broad St, Suite 400
Phila, PA 19107
Phone: 267-242-5014
Representing: Amicus Curiae et al. Charlene David

Served: Andrew Michael Rocco
Service Method: eService
Email: andrew.rocco@dechert.com
Service Date: 2/25/2022
Address: 315 Green St
Apt. C
Philadelphia, PA 19123
Phone: 856-693-0378
Representing: Amicus Curiae Khalif Ali, et al

Served: Benjamin David Geffen
Service Method: eService
Email: bgeffen@pilcop.org
Service Date: 2/25/2022
Address: 1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103
Phone: 215--62-7-7100
Representing: Amicus Curiae Khalif Ali, et al

Served: Bernard T. Kozykowski Jr.
Service Method: First Class Mail
Service Date: 2/25/2022
Address: 7237 Standing Stone Rd
Huntingdon, PA 16652
Phone: 814-667-2034
Pro Se: Amicus Curiae Bernard T. Kozykowski Jr.

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Brian Anthony Gordon
Service Method: eService
Email: Briangordon249@gmail.com
Service Date: 2/25/2022
Address: One Belmont Avenue
Suite 519
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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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Exhibit B

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IN THE SUPREME COURT OF PENNSYLVANIA

No. 141 MM 2021

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 Bachunis; Tom DeWall; Stephanie McNulty; and Janet Temin,

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

No. 142 MM 2021

Philip T. Gressman; Ron Y. Donagi; Kristopher R. Tapp; Pamela A. Gorkin; David P. Marsh; James L. Rosenberger; Amy Myers; Eugene Boman; Gary Gordon; Liz McMahon; Timothy G. Feeman; and Garth Isaak

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

**OPPOSITION OF PROPOSED INTERVENORS BRYAN CUTLER,
SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES;
KERRY BENNINGHOFF, MAJORITY LEADER OF THE PENNSYLVANIA
HOUSE OF REPRESENTATIVES; JAKE CORMAN, PRESIDENT
PRO TEMPORE OF THE PENNSYLVANIA SENATE; AND KIM
WARD, MAJORITY LEADER OF THE PENNSYLVANIA SENATE TO
PETITIONERS' APPLICATIONS FOR EXERCISE OF EXTRAORDI-
NARY RELIEF OR KING'S BENCH POWER**

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Neither set of Petitioners meets the “heavy burden” of justifying the exercise of extraordinary jurisdiction here. *Wash. Cty. Comm’rs v. Pa. Lab. Rels. Bd.*, 490 Pa. 526, 532, 417 A.2d 164, 167 (1980). Most of the issues in these matters are not difficult and do not call for this Court’s review, at least in this posture.

There is no dispute that the Commonwealth’s existing congressional district plan cannot be used in future elections. And, although there is still time for the General Assembly and the Governor to reach an accord and enact a new congressional redistricting plan, the Commonwealth Court, in its order of December 20, 2021, has ordered judicial redistricting proceedings. Based on that order, the Commonwealth Court has implicitly concluded that the process has advanced to a stage where judicial redistricting proceedings are appropriate even though the General Assembly has “the primary responsibility and authority for drawing federal congressional legislative districts.”¹ *League of Women Voters v. Commonwealth*, 645 Pa. 1, 129, 178 A.3d 737, 821 (2018). No matter which court adjudicates this case, it will have little or no difficulty enjoining the existing plan or ordering the commencement of remedial proceedings. That issue is not of “immediate public importance.” 42 Pa. Stat. and Cons. Stat. § 726.

¹ The Commonwealth’s political actors continue to work toward a legislative solution. If these efforts succeed, the resulting legislation would set the congressional districts for future elections by operation of law, regardless of how far judicial proceedings have advanced and even if they have yielded a final judgment.

What *may* prove difficult and important is reviewing proposed plans and fashioning a remedy. Although Petitioners make these remedial proceedings the focus of their applications, they ignore institutional interests and competencies that counsel in favor of the familiar two-step process of trial-court adjudication and appellate review. And they inexplicably ask this Court to adopt a new redistricting plan without evidentiary proceedings or an opportunity for public input. A judicial redistricting process, like a legislative redistricting process, should be fact- and labor-intensive and involve opportunities for input and proposals, adversarial proceedings to establish facts germane to those proposals, and evidentiary hearings and submissions to ascertain an acceptable and lawful redistricting solution. In the prior impasse case that Petitioners cite, *Mellow v. Mitchell*, 530 Pa. 44, 607 A.2d 204 (1992), a full evidentiary record was developed and trial proceedings were conducted before this Court adopted congressional redistricting remedies. The Commonwealth Court is the best-situated institution to conduct evidentiary proceedings, and this Court is the best-situated institution to review that court's judgment.

The applications for extraordinary review fail to establish, or even address, why extraordinary review is preferable to that familiar process, appropriately expedited. They should be denied. Alternatively, even if this Court exercises extraordi-

nary jurisdiction, it should provide for evidentiary proceedings and reject Petitioners' request to select a new redistricting plan solely on the basis of legal briefs and lawyers' arguments, without the benefit of a full vetting that the process deserves.

BACKGROUND

After each decennial census, "States must redistrict to account for any changes or shifts in population." *Georgia v. Ashcroft*, 539 U.S. 461, 489 n.2 (2003). In Pennsylvania, "the primary responsibility and authority for drawing federal congressional legislative districts rests squarely with the state legislature." *League of Women Voters*, 645 Pa. at 129, 178 A.3d at 821. However, it is not contested in this case that, "[w]hen . . . the legislature is unable or chooses not to act, it becomes the judiciary's role to determine the appropriate redistricting plan."² *League of Women Voters*, 645 Pa. at 130, 178 A.3d at 822.

² Officers of the General Assembly have argued in prior litigation, including the *League of Women Voters* case, that the "Elections Clause" of Article I, section 4 of the U.S. Constitution forecloses state courts from enforcing *state* law against an act of the state's legislature, or at least imposes limitations when they do so. The difference here is that the current congressional plan contravenes the U.S. Constitution, and it is settled law that state courts have authority to declare and remedy violations of the U.S. Constitution, even with respect to laws governing congressional elections. *See Growe v. Emison*, 507 U.S. 25, 32–36 (1993). Proposed Intervenor do not dispute that the Pennsylvania courts have the authority to adjudicate Petitioners' claims for violations of the U.S. Constitution or other federal laws, and it appears that the state-law issues they raise implicate standards that duplicate federal standards.

The relevant facts of this case are not in dispute. Pennsylvania’s existing congressional plan was fashioned by this Court in 2018 based upon the 2010 census results. *League of Women Voters*, 645 Pa. 576, 583, 181 A.3d 1083, 1087 (2018) (finding that the adopted plan achieved “equality of population”); *see also Carter* Petition ¶ 18 (alleging that the Court’s adopted plan was “based on the 2010 data”); *Gressman* Petition ¶ 2 (same).

The 2020 census results have since been released, both in the form of initial apportionment results at the level of each state and later in the form of census-block level population data suitable for redistricting *within* states. *Carter* Petition ¶¶ 19, 27; *Gressman* Petition ¶¶ 26–27. The results show, among other things, that Pennsylvania’s population has increased; that it has not increased sufficiently to keep pace with neighboring states; that Pennsylvania must lose one congressional seat, dropping from 18 to 17 seats; and that the existing districting plan—aside from being improperly crafted to yield 18 seats rather than 17—is malapportioned. *Carter* Petition ¶¶ 19–28; *Gressman* Petition ¶¶ 26–27. It is therefore undisputed that redistricting is essential for the Commonwealth to fulfill the Equal Protection Clause’s guarantee of “one person, one vote.” *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964).

The two Petitions for Review commencing these suits were filed in the Commonwealth Court on December 17, 2021. In each case, Petitioners allege that they

reside in underpopulated districts, and they assert that, without a new, properly apportioned redistricting plan, their votes will be diluted in future elections. *Carter* Petition ¶¶ 9, 49–63; *Gressman* Petition ¶¶ 10–22, 34–52. Although Proposed Intervenor do not have sufficient information to verify Petitioners’ factual assertions (such as their residencies), at the end of the day, Proposed Intervenor do not dispute the basic notion that the Commonwealth cannot use the existing congressional districting plan in 2022 elections for the simple reason that the Commonwealth cannot elect an 18-member delegation to the next Congress since it has only been apportioned 17 seats in that Congress. Nor do Proposed Intervenor disagree with the principle that the U.S. Constitution requires equally apportioned districts.

Proposed Intervenor are officers of the Pennsylvania Senate and House of Representatives who have authorization from members of the Republican Caucuses of those bodies, who possess sufficient votes to pass legislation, to seek intervention on their behalf in this suit. Proposed Intervenor have worked together with other legislators in good faith to develop a congressional redistricting plan that complies with the law and that the General Assembly could pass and present to the Governor. Although a plan has not yet been enacted, Proposed Intervenor will continue to take this approach to the work. The legislative process will continue, but Proposed In-

tervenors acknowledge that the Commonwealth Court has ordered the commencement of a judicial redistricting process, and Proposed Intervenor do not intend to file preliminary objections in either action.³

The Commonwealth Court quickly processed the Petitions, issued a scheduling order, called for petitions to intervene, and otherwise prepared to proceed expeditiously to resolve this case by early February. Although both sets of Petitioners criticize this schedule as insufficiently expedited, they did not move the Commonwealth Court to amend it.

Instead, Petitioners filed applications for extraordinary review in this Court, seeking to bypass the Commonwealth Court. They have proposed a scheduling order that would call for presentation of proposed plans and briefing regarding those plans, but no discovery or evidentiary hearings. *See Carter* Application 11; *Gressman* Application 22. Proposed Intervenor, meanwhile, petitioned the Commonwealth Court to intervene. Given the time-sensitive nature of this case, they are simultaneously filing this brief in opposition to the applications for extraordinary review, to provide the Court with adversarial briefing on those applications.

³ As the *Carter* Petitioners recount, they filed similar claims months *before* usable redistricting data were even released, and the Commonwealth Court correctly sustained preliminary objections to their original petition for review, concluding that the suit was premature and unripe. The *Carter* Petitioners did not appeal that judgment.

ARGUMENT

This case does not fall within the narrow and exceptional circumstances meriting a departure from the ordinary two-stage judicial process of trial court adjudication and appellate review. Quite the opposite. Under current conditions, it is both preferable and feasible to adhere to that traditional process, albeit on an expedited basis.

To qualify for extraordinary review, a case must raise “an issue of immediate public importance.” 42 Pa. Stat. and Cons. Stat. Ann. § 726. “This court’s exercise of extraordinary jurisdiction should be used sparingly.” *Commonwealth v. Morris*, 565 Pa. 1, 18, 771 A.2d 721, 731 (2001); accord *Wash. Cty.*, 490 Pa. at 532, 417 A.2d at 167. To begin, Petitioners must establish both that there is a heightened public interest in the issues at hand and that the ordinary litigation process is insufficient to timely remedy alleged violations of their rights. *Bd. of Revision of Taxes, City of Phila. v. City of Philadelphia*, 607 Pa. 104, 122, 4 A.3d 610, 620 (2010); see also *Carter* Application 7; *Gressman* Application 8–9. Furthermore, “[t]he presence of an issue of immediate public importance is not alone sufficient to justify extraordinary relief. As in requests for writs of prohibition and mandamus, we will not invoke extraordinary jurisdiction unless the record clearly demonstrates a petitioner’s rights.” *Cty. of Berks ex rel. Baldwin v. Pennsylvania Lab. Rels. Bd.*, 544 Pa. 541,

549, 678 A.2d 355, 359 (1996) (citation omitted). “Even a clear showing that a petitioner is aggrieved does not assure that this Court will exercise its discretion to grant the requested relief.” *Id.* This standard is not met here.

A. These Matters Present Fact-Intensive Questions That Do Not Meet The High Standards For Extraordinary Jurisdiction

Most of the issues in these cases are not difficult or important within the meaning of the extraordinary-jurisdiction standard, and those that *may* prove to be so are fact-intensive and not amenable to clean resolution as a matter of law.

First, the liability issues are governed by clearly established law such that no serious contest is likely to arise. Issues that qualify under the “public importance” test include those as to which this Court should “provide guidance” because they are “likely to recur,” *Morris*, 565 Pa. at 18, 771 A.2d at 731, and those that remain unresolved and concern a variety of state instrumentalities and citizens, *Bd. of Revision of Taxes*, 607 Pa. at 122, 4 A.3d at 620. But these cases raise no issues that are unresolved or are “likely to recur.” Rather, they present a “garden variety” dispute, *id.*, in the sense that there is no basis even to contest the governing legal principles or their application. *See Carter Application 7* (“[T]can be no dispute that continuation of the status quo is unconstitutional.”); *Gressman Application 1* (“The current map’s malapportionment violates the Pennsylvania Constitution.”). As the U.S. Supreme Court has explained, the one-person, one-vote rule is “easily administrable” because judges are able “to decide whether a violation has occurred (and to remedy

it) essentially on the basis of three readily determined factors—where the plaintiff lives, how many voters are in his district, and how many voters are in other districts.” *Vieth v. Jubelirer*, 541 U.S. 267, 290 (2004) (plurality opinion). There is no dispute here that the Commonwealth’s congressional districts are malapportioned, and there is unlikely to be a genuine dispute over where Petitioners reside. That portion of the case, at least, does not present “an issue of immediate public importance.” 42 Pa. Stat. and Cons. Stat. § 726.

Second, the issues that *may* rise to the level of public importance fail to qualify under independent elements of the extraordinary-review test. As noted, this Court “will not invoke extraordinary jurisdiction unless the record clearly demonstrates a petitioner’s rights.” *Cty. of Berks*, 544 Pa. at 549, 678 A.2d at 359 (citation omitted). As to any difficult and important issue, this record does not do so. The challenge in an impasse case lies in selecting a remedial districting plan. In that regard, Petitioners cannot show that the record clearly demonstrates their rights. There are infinite ways to divide the Commonwealth into 17 equally populated congressional districts, and Petitioners cannot establish a clear right to their preferred choice among numerous options. Neither set of Petitioners has even proposed a plan at this stage. The tribunal that adjudicates the facts of this case will be obliged to entertain competing proposals, take evidence, make factual findings, and make discretionary choices in fashioning a remedy. This situation is the opposite of one where “there is no factual

dispute,” and the matter of public importance raises an issue “of law, resolvable on the pleadings.” *Bd. of Revision of Taxes*, 607 Pa. at 122–23, 4 A.3d at 621. It is a poor fit for this Court’s extraordinary jurisdiction.

B. There Is Time for an Expedited Proceeding in the Commonwealth Court and Review in This Court

Petitioners are incorrect that proceedings in the Commonwealth Court “will be insufficient to timely remedy Petitioners’ rights.” *Carter* Application 8; *see also Gressman* Application 21–22 (“[T]he schedule established by the Commonwealth Court would effectively deny the parties any opportunity to appeal that Court’s judgment to this Court[.]”). Although proceedings undoubtedly must be expedited to ensure time for administration of any remedial plan, recent experience indicates that there is time for both trial and appellate proceedings here. Just three years ago, in the *League of Women Voters* litigation, this Court issued a liability ruling on January 22, 2018—after a full trial in the Commonwealth Court—and a remedial ruling on February 19, 2018. *League of Women Voters of Pa. v. Commonwealth*, 644 Pa. 287, 175 A.3d 282 (2018); *League of Women Voters of Pa. v. Commonwealth*, 645 Pa. 576, 181 A.3d 1083 (2018). In *Mellow v. Mitchell*, 530 Pa. 44, 607 A.2d 204 (1992), a final ruling came even later, on March 26 of 1992—which was an election year.

There is no indication that implementing remedies in either instance posed any administrative challenge.⁴

The Commonwealth Court is positioned to proceed on an expedited basis and issue a judgment in early February, which would permit review in this Court by the middle of February, achieve the *League of Women Voters* schedule, and outpace the *Mellow* schedule. Indeed, in *Mellow*, an order was issued providing that a court-selected plan would be imposed “if the Legislature failed to act by February 11, 1992.” *Id.* at 47, 607 A.2d at 205. Here, the Commonwealth Court set a more restrictive deadline of January 31, 2022. Furthermore, it is more important to take a few extra weeks to ensure that a suitable plan is adopted to govern the Commonwealth’s congressional elections for the next decade than to rush the process. But, if the Court perceives things differently, the appropriate remedy would be to direct the Commonwealth Court to expedite its proceedings beyond what it has already done. Yet Petitioners did not move the Commonwealth Court to amend its scheduling order.

⁴ Petitioners rely on prior assertions by the Department of State that January 24 is the deadline for a new plan, but they do not cite statutory authority for that proposition, and no one has explained why the dates that were found sufficient in *League of Women Voters* and *Mellow* are unworkable here.

C. These Cases Cannot Be Resolved Without Evidentiary Hearings, and Petitioners Fail To Explain How Extraordinary Review Is Preferable to Appellate Review

The applications contend that this Court may, through extraordinary review, bring this case to final judgment more expeditiously than adjudication in the Commonwealth Court followed by an appeal to this Court. But Petitioners ignore that, in all events, a two-step process is essential, because the fact-intensive issues of redistricting require a lengthy evidentiary hearing. The applications fail to explain why the familiar two-step process, appropriately expedited, is inferior to folding those two steps into one extraordinary review process. No reason is apparent and consolidating the entire process before this Court could lead to distrust of the process.

The two cases Petitioners rely on, *Mellow* and *League of Women Voters*, confirm the fact-intensive nature of the issues at hand and the necessity of evidentiary proceedings. Petitioners cite these cases for the proposition that they “are not asking this Court to do something it has not done before.” *Carter* Application 9; *see also Gressman* Application 5. But they *are*, in fact, making such a request, at least insofar as they request that a new plan be imposed without evidentiary proceedings and process for public input. *See id.* at 11; *Gressman* Application 22.

Both of the cases that Petitioners cite were decided after extensive evidentiary proceedings. In *Mellow*, the Court assigned a judge of the Commonwealth Court “as Master to conduct hearings” and issue a “report,” and, as a result, “three days of

hearings” were conducted “in the Commonwealth Court,” 607 A.2d at 206, resulting in a “Factual Analysis” subject to review in this Court, *id.* at 215. In *League of Women Voters*, this Court addressed remedial issues only after a liability trial had occurred in the Commonwealth Court (the case concerned “partisan gerrymandering,” not a decennial impasse), and this Court’s remedial ruling made it clear that “[t]he Remedial Plan is based upon the record developed in the Commonwealth Court.” *League of Women Voters*, 645 Pa. at 583, 181 A.3d at 1087. Here, however, Petitioners ask this Court to adopt a remedy (i.e., a new congressional redistricting plan that will be in place for the next decade) without evidentiary proceedings, either in the Commonwealth Court or this Court. Essentially, Petitioners request that this Court act as the map drawer and also the appellate court that reviews the legality of the adopted map. At a minimum, *this* request is untenable, unprecedented, and meritless.

To be sure, the *Mellow* decision signals that it is possible for this Court to exercise extraordinary jurisdiction in an impasse case and resolve evidentiary matters by resort to hearings before a special master (presumably, a Commonwealth Court judge) rather than through appellate review of a Commonwealth Court judgment. Although taking that approach is an *option*, the Court should decline to do so here. The difference between the options in terms of time to finality is marginal at most, since both options would entail the two steps of (1) evidentiary hearings in the

Commonwealth Court—whether before a “master” or a “judge”—and (2) subsequent briefing and argument in this Court.

And the Court’s interest in “promot[ing] confidence in the authority and integrity of our state and local institutions,” *Bd. of Revision of Taxes*, 607 Pa. at 122, 4 A.3d at 620, cuts in favor of respecting the traditional judicial process (on an expedited basis). On this point, it would be preferable for this Court to permit the Commonwealth Court to take evidence and issue findings and a judgment and, subsequently, exercise review as an appellate tribunal than to issue all findings itself after *de novo* review of a special master’s report. The former path would create two layers of review over the issues in this case and therefore afford disappointed litigants, and the public, recourse to an oversight process, which would highlight the integrity and fairness of the proceedings. Those values are essential to public faith in a redistricting process. By comparison, in an extraordinary-review process, the public would see this Court issue findings of fact and adopt a remedy and simultaneously declare those findings sound and the remedy lawful, leaving no room for additional oversight and review, except in the event of a colorable violation of federal law. Because it is almost certain that *someone* is bound to complain of any redistricting plan

adopted in any jurisdiction under any circumstances, interests of public confidence weigh against this approach.⁵

Denying the applications would also “conserve judicial resources,” *Morris*, 565 Pa. at 18, 771 A.2d at 731, by limiting this Court’s adjudication to those issues raised by the parties on appeal, after issues are narrowed in the Commonwealth Court. This approach would facilitate the narrowing of issues through trial-level litigation and the weeding out of issues that ultimately prove not to be material or worthy of this Court’s review. By contrast, folding both steps of adjudication into one process would, with or without a special master, make this Court responsible for resolving all disputes in the first instance, regardless of how material and difficult they prove to be.

Because Petitioners fail to acknowledge the need for evidentiary hearings, they are in no position to explain why evidentiary proceedings before a special master of the Commonwealth Court are preferable to evidentiary proceedings before a judge of the Commonwealth Court. And none is apparent. The *Mellow* decision did not address this question and appears not to have considered it. Therefore, contrary to what Petitioners suggest, it should not be read to establish that impasse cases must

⁵ One need not doubt the good faith of members of this Court to see that a process of oversight through ordinary appellate review enhances the appearance of fairness, due process, and integrity—which are all values underpinning the *League of Women Voters* decisions.

automatically be resolved in this Court's extraordinary jurisdiction. This is a differently composed Court, acting 30 years after *Mellow*, and is of course free to exercise its discretion in a different way, based on current circumstances and considerations.

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CONCLUSION

The applications should be denied. Alternatively, if this Court exercises extraordinary jurisdiction, it should adopt a scheduling order that provides for public evidentiary proceedings directed through an appointed special master.

Dated: December 27, 2021

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I hereby 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.

/s/ Anthony R. Holtzman
Anthony R. Holtzman

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by PACFile eService as follows:

All counsel of record

Date: December 27, 2021

/s/ Anthony R. Holtzman

Anthony R. Holtzman

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