
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

v. : No. 464 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania :
Bureau of Election Services and :
Notaries, :
Respondents :

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

v. : No. 465 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania :
:

Bureau of Election Services and :
Notaries, :
Respondents

**CARTER PETITIONERS’ MEMORANDUM IN OPPOSITION TO THE
APPLICATION TO INTERVENE BY THE PROPOSED INTERVENORS**

INTRODUCTION

The *Carter* Petitioners, a group of Pennsylvania voters residing in overpopulated congressional districts, filed this action alleging malapportionment under the Free and Equal Elections Clause of the Pennsylvania Constitution (Art. I, § 5) and Article I, Section 2 of the United States Constitution. Because the General Assembly—the actor tasked with initiating redistricting in the first instance—has thus far failed to timely submit a map for the Governor’s approval, the *Carter* Petitioners called on Pennsylvania’s judiciary to intercede, remedy the malapportionment, and protect their constitutional rights.

The Proposed Intervenors seek to join the case as Petitioners alongside the *Carter* and *Gressman* Petitioners. But, unlike the existing Petitioners, the Proposed Intervenors do not allege a malapportionment injury or any plausible injury to their constitutionally protected rights sufficient for standing. They ask to intervene simply to make sure the Pennsylvania and United States Constitutions are followed when the judiciary adopts a new congressional plan—a prototypical generalized interest.

Proposed Intervenors will not suffer any legally cognizable injury if they are denied intervention or if the congressional reapportionment plan they intend to offer is ultimately rejected. And in fact, several of the Proposed Intervenors were previously denied intervention for asserting a similar claim in a similar case earlier this year. Their interest in this case is merely one of policy preference. Because intervention requires a legal stake in the controversy, this Court should deny their Application to Intervene.

BACKGROUND

The Pennsylvania Constitution tasks the General Assembly and the Governor with passing a congressional apportionment plan each redistricting cycle in the first instance. Pet. ¶ 36. And after each decennial census, the Constitution and laws of the United States requires that states draw equally apportioned districts according to the number of congressional districts the state receives in the United States House of Representatives. Pet. ¶¶ 33-35. Following the 2020 Census, Pennsylvania was apportioned 17 congressional districts, one fewer than apportioned following the 2010 Census. Pet. ¶ 2. Pennsylvania has not yet adopted a 2021 congressional plan that reflects this new data, and the General Assembly adjourned for the year without passing such a plan. Pet. ¶ 41.

On December 17, 2021, the *Carter* Petitioners filed this action. Petitioners are registered Pennsylvania voters who reside in overpopulated congressional districts

and are consequently “deprived of the right to cast an equal vote, as guaranteed to them by the U.S. Constitution and the Pennsylvania Constitution.” Pet. ¶ 10.

The *Carter* Petitioners filed a substantially similar suit in this Court in April 2021, alleging that the General Assembly and Governor were likely to come to an impasse in passing congressional plans in time for the 2022 election cycle. *See* Ex. A. That suit was ultimately dismissed on ripeness grounds, but during the case’s pendency several groups attempted to intervene, including some of the current Proposed Intervenors, who appeared as “Individual Republican Voters.” *See* First Intervention App. at 14-16. Specifically, Proposed Intervenors Louis Capozzi, James P. Forman, Justin Behrens, Kristine Eng, David Ball, and James Valsilko all previously applied to intervene as *Respondents* in the first *Carter* litigation and were denied intervention by the Commonwealth Court.¹ *Id.*; App. ¶¶ 18-42. As the Commonwealth Court explained, the Individual Republican Voters did not have an interest that was “substantial, direct, and immediate” because “[e]very elector ... has an interest in redrawing a congressional district map that meets constitutional standards.” Ex. C at 18.

The Proposed Intervenors are comprised of several voters who reside in different counties throughout the state. They do not allege a malapportionment

¹ Proposed Intervenors in this case are also represented by the same counsel the Individual Republican Voters as they were in *Carter*: Thomas W. King, Thomas E. Breth, and Jordan P. Shuber of Dillon McCandless King Coulter & Graham L.L.P. *See* Ex. B.

injury. Instead, they merely argue that the Court should select a congressional plan that meets certain features, such as keeping districts contiguous, and not splitting municipalities or townships and allege “a direct and substantial interest in congressional map making discussion and the looming required court intervention.” *Id.* at ¶¶ 48-49, 58. They also assert they will not be adequately represented by any of the existing parties. *Id.* at ¶ 117.

LEGAL STANDARD

Applications to intervene are evaluated under Rules 2327 and 2329 of the Pennsylvania Rules of Civil Procedure. To intervene, Proposed Intervenors must establish that “the determination of [this] action may affect any legally enforceable interest” of the Proposed Intervenors. *See* Pa. R.C.P. 2327(4). In determining whether a party has a “legally enforceable interest” for purposes of intervention, courts look to principles governing legal standing. *See Markham v. Wolf*, 635 Pa. 288, 297, 136 A.3d 134, 140 (2016) (“[W]hether Appellants were properly denied intervenor status . . . turns on whether they satisfy our standing requirements.”); *Application of Biester*, 487 Pa. 438, 443, 409 A.2d 848, 851 (1979) (vacating order granting intervention where applicant lacked standing to advance the actions).

A party has standing where they have “a substantial, direct, and immediate interest in the matter.” *Markham*, 635 Pa. at 298. “The fact that the proceeding may, in some way, affect the proposed intervenor is not sufficient to invoke a ‘legally

enforceable interest.” *In re L.J.*, 450 Pa. Super. 685, 700, 691 A.2d 520, 527 (Pa. Super. 1997) (citing *In re Subpoena of Pa. Crime Comm’n*, 453 Pa. 513, 309 A.2d 401 (1973) (denying intervention where interest was too general and indirect to support intervention); *Pa. R.R. Co. v. Hughart*, 422 Pa. 615, 619, 222 A.2d 736, 739(1966) (denying intervention where applicants’ interest was “too tangential” to the proceedings)). Accordingly, “a mere general interest in the litigation, or an interest in the issue that is collateral to the basic issues in the cause, or an indirect economic interest or motive with respect to the litigation, is not a sufficient basis for intervention pursuant to [Rule 2327].” *Bauder v. Bauder*, No. 2012-40250 (Pa. D. & C. Mar. 17, 2014) (citing 7 Goodrich Am Ram 2d, § 2327:8).

Finally, even if a party establishes a legally enforceable interest under Rule 2327(4), a court may deny intervention if the party’s interests are already adequately represented in the litigation, or if the intervention would “unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa. R.C.P. 2329; *Wilson v. State Farm Mut. Auto. Ins. Co.*, 512 Pa. 486, 492, 517 A.2d 944, 947 (1986) (explaining, under Rules 2327 and 2329, “a mere prima facia basis for intervention is not enough . . .” and that Rule 2329 can otherwise preclude intervention to a party who has already shown a legally enforceable interest).

ARGUMENT

- I. **The Proposed Intervenors have no legally enforceable interests in this action sufficient for intervention.**

A party to reapportionment litigation must have a “substantial, direct and immediate” interest in challenges to reapportionment plans. *See Albert v. 2001 Legislative Reapportionment Comm’n*, 567 Pa. 670, 678-79, 790 A.2d 989, 994 (2002); *Erfer v. Commonwealth*, 568 Pa. 128, 135-36, 794 A.2d 325, 329-30 (2002), *overruled on other grounds by League of Women Voters v. Commonwealth*, 645 Pa. 1, 178 A.3d 737 (2018). One such interest is vote dilution. If an individual is placed in an overpopulated district, relative to other districts, in the state, that individual has a substantial, direct and immediate interest in an apportionment plan. *See, e.g., League of Women Voters*, 645 Pa. at 117 (“It is axiomatic that a diluted vote is not an equal vote, as all voters do not have an equal opportunity to translate their votes into representation.”). For that reason, both the *Carter* and *Gressman* Petitioners, who have alleged a malapportionment injury, are proper parties to this case.

In contrast, this Court confirmed that a voter’s *general* interest in contributing to the map-making discussion or ensuring Pennsylvania has a map that meets constitutional standards is insufficient for intervention. *See* Ex. C at 13-19. For that reason, the Commonwealth Court denied intervention to the “Individual Republican Voters,” who at that point had attempted to intervene as *Respondents* opposing the *Carter* Petitioners’ suit. Ex. C at 20; Ex. B at 3. Now, several of the same “Individual

Republican Voters” have repackaged their application from *Carter* into a “non-partisan” version, although this time they appear as “Citizen-Voter” *Petitioners*.

Crucially, however, the Proposed Intervenors *still* have not managed to identify a legally enforceable interest in this litigation. They do not, for example, cite any malapportionment injury. To the contrary, the Proposed Intervenors emphasize that they live in different districts from the *Carter* Petitioners, *see* App. ¶ 9, which means that many live in Pennsylvania’s underpopulated congressional districts and are thus their votes are *overrepresented* in Pennsylvania’s congressional elections. And while the Proposed Intervenors express a concern about a congressional plan that splits their counties and municipalities as a potential violation of their “ability to associate with their neighbors and community members,” App. ¶ 68, where district lines are drawn in no way inhibits one’s ability to associate with neighbors. There is simply no legally cognizable associational right to be included in a congressional district with one’s neighbors and community members, as demonstrated in part by the fact that Proposed Intervenors cite no authority for such a proposition.

Instead of alleging any type of concrete voting rights injury, like the other Petitioners, the Proposed Intervenors allege simply that they are voters and residents of the state who have a general interest in reapportionment process. *See* App. at ¶ 58 (claiming “a direct and substantial interest in congressional map making discussion

and the looming required court intervention”). While Petitioners do not dispute that the Citizen-Voters’ interest in redistricting is a genuine one, such a generalized interest is simply not a legally enforceable one thus not sufficient for intervention as a Petitioner. Carter Order at 18; *see also In re L.J.*, 450 Pa. Super. 685, 700, 691 A.2d 520, 527 (Pa. Super. 1997) (“The fact that the proceeding may, in some way, affect the proposed intervenor is not sufficient to invoke a ‘legally enforceable interest.’”) (citation omitted).

The Proposed Intervenors cannot transform this generalized interest into one sufficient for standing simply because they present the Court with discrete preferences for the upcoming plan, such as keeping districts contiguous, *see* App. ¶ 48, or not splitting certain townships or municipalities, *see id.* at ¶¶ 49-54 79-80.² Such a preference is not itself a legally enforceable interest. Notably, the preferences that the Proposed Intervenors express, such as keeping subdivisions whole (when possible) or keeping districts contiguous, are *already* constitutional requirements for Pennsylvania’s congressional districts that this Court will surely consider when adopting a new plan. *See, e.g., League of Women Voters of Pennsylvania v. Commonwealth*, 645 Pa. 576, 581 (2018) (acknowledging remedial maps should not “divide any county, city, incorporated town, borough, township, or ward, except

² Notably, the Citizen-Voters’ concerns about these issues are about proposed maps pending in the General Assembly, not maps even currently before this Court or any court. App. at ¶¶ 78-80.

where necessary”). At bottom, the Proposed Intervenors’ interest in making sure the theoretical map this Court might adopt adequately follows the Pennsylvania Constitution is insufficient for intervention. Their interest is not more than “the common interest of all citizens in procuring obedience to the law.” Ex. C at 17 (citing *Markham*, 136 A.3d at 140).

II. Good cause exists to deny the application.

Even if this Court were to conclude the Proposed Intervenors established a legally enforceable interest, this Court would still have good cause to exercise its discretion under Rule 2329 to deny the application to intervene. The Court may still deny intervention if the Court concludes the interests of the applicants will be “adequately represented” in the litigation or intervention will “unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa. R.C.P. § 2329(2)-(3).

The Proposed Intervenors do not adequately explain why the parties in the case do not already adequately represent their interests—they appear to merely assume that the parties in the litigation, as well as this Court, do not have an interest in implementing a map that is lawful under the state and federal constitutions. But such an assumption is belied by the legal presumption that the Court will act with regularity, in accordance with the law, and without violating the rights of citizens. *See, e.g., Albert v. Lehigh Coal and Navigation Co.*, 246 A.2d 840, 845 n.5 (Pa.

1968) (“There is a *prima facie* presumption of the regularity of the acts of public officials which exists until the contrary appears[.]”). Simply put, the Commonwealth Court has no interest or incentive to adopt a gerrymandered congressional plan. Proposed Intervenors have not alleged interests that aren’t already adequately protected, or at risk whatsoever, in their application.

That the *Carter* Petitioners and Proposed Intervenors are from different counties in Pennsylvania does not change the result. It cannot be that voters from each of the 67 counties in the Commonwealth must be allowed to intervene simply because they reside in different counties, as that would unnecessarily complicate and unduly a case that must be adjudicated expeditiously. *See E. Am. Transp. & Warehousing, Inc. v. Evans Conger Broussard & McCrea, Inc.*, No. 2187, 2002 WL 1803718, at *4 (Pa. Ct. Com. Pl. July 31, 2002) (denying intervention under Rule 2329(3) where there were already many parties in the case and allowing intervention “would unnecessarily delay and complicate” the case); *see also Erfer*, 568 Pa. at 132 (Pennsylvania Supreme Court ordered Commonwealth Court to hear redistricting claims on an expedited basis and produce findings of fact and conclusions of law within two weeks of the Court’s order). For this reason, too, the Court should deny their application under Rule 2329.

CONCLUSION

For these reasons, Petitioners respectfully request this Court deny the Proposed Intervenors leave to intervene.

Dated: December 30, 2021

Abha Khanna*
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
T: (206) 656-0177

Lalitha D. Madduri*
Christina A. Ford*
Jyoti Jasrasaria*
Raisa Cramer*
Elias Law Group LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
lmadduri@elias.law
cford@elias.law
jjasrasaria@elias.law
rcramer@elias.law
T: (202) 968-4490

Matt Gordon*
Perkins Coie LLP
1201 Third Avenue Suite 4900
Seattle, WA 98101
MGordon@perkinscoie.com
T: (206) 359-3552

Respectfully submitted,

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

* *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Memorandum in Opposition to the Application to Intervene by the Citizen-Voter Intervenors to be served upon the following parties and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

By first class mail:

Kathleen Kotula
401 North Street, Room 301
Harrisburg, PA 17120-0500

By PACFile eService:

All counsel of record as set forth in the PACFile proof of service filed herewith

Dated: December 30, 2021

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
RogersE@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

*Counsel for Petitioners Carter,
et. al. in Case No. 464 MD 2021*

Exhibit A

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

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

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

Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

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

No. _____

the Pennsylvania Bureau of Election Services and Notaries,
Respondents.

PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

Commonwealth officials in their official capacities.

PARTIES

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

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

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

13. Respondent Veronica Degraffenreid is the Acting Secretary of the

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

II. The 2020 Census is complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A.3d at 1086.

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

CLAIMS FOR RELIEF

COUNT I

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

34. Petitioners reallege and reincorporate by reference all prior paragraphs

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

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

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

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

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

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

COUNT II

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

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

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

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

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

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

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

COUNT III

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

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

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

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

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

COUNT IV

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

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

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

Dated: April 26, 2021

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

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

Respectfully submitted,

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

CERTIFICATE OF COMPLIANCE

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

Submitted by: Edward D. Rogers

Signature: /s/ Edward D. Rogers

Name: Edward D. Rogers

Attorney No.: 69337

VERIFICATION

I, Carol Ann Carter, hereby state:

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

Signed:

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

Dated:

A handwritten date "April 26, 2021" written in cursive script over a horizontal line.

NOTICE TO PLEAD

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

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

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

Dated: April 26, 2010

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

CERTIFICATE OF SERVICE

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

By Certified Mail:

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

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

Dated: April 26, 2021

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

Exhibit B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|---------------------------|---|--------------------------|
| CAROL ANN CARTER, MONICA | : | |
| PARRILLA, REBECCA | : | No.: 132 MD 2021 |
| POYOUROW, WILLIAM TUNG, | : | |
| ROSEANN MILAZZO, BURT | : | |
| SIEGEL, SUSAN CASSANELLI, | : | APPLICATION FOR LEAVE TO |
| LEE CASSANELLI, LYNN | : | INTERVENE BY PROPOSED |
| WACHMAN, MICHAEL | : | INTERVENORS THE |
| GUTTMAN, MAYA FONKEU, | : | REPUBLICAN PARTY OF |
| BRADY HILL, MARY ELLEN | : | PENNSYLVANIA AND |
| BALCHUNIS, TOM DEWALL, | : | INDIVIDUAL REPUBLICAN |
| STEPHANIE MCNULTY, and | : | VOTERS |
| JANET TEMIN, | : | |

| | | |
|--------------|---|-----------------------------|
| Petitioners, | : | Filed on Behalf of Proposed |
| | : | Intervenors - Respondents: |

v.

| | | |
|-------------------------------------|---|------------------------------|
| VERONICA DEGRAFFENREID, in | : | Republican Party of |
| her official capacity as the Acting | : | Pennsylvania, Inc., et al. |
| Secretary of the Commonwealth of | : | |
| Pennsylvania; and JESSICA | : | Counsel for Proposed |
| MATHIS, in her official capacity as | : | Intervenors: |
| Director of the Bureau of Election | : | Thomas W. King, III, Esquire |
| Services and Notaries, | : | Pa. I.D. No. 21580 |

| | | |
|--------------|---|---------------------------|
| Respondents, | : | Thomas E. Breth, Esquire |
| | : | Pa. I.D. No. 66350 |
| | : | Jordan P. Shuber, Esquire |
| | : | Pa. I.D. No. 317823 |

v.

| | | |
|------------------------------|---|---------------------------------|
| REPUBLICAN PARTY OF | : | |
| PENNSYLVANIA, INC.; PATRICIA | : | Jason B. Torchinsky |
| K. POPRIK; DAVID TORRES; | : | (Va. ID No. 47481)** |
| BILLY LANZILOTTI; NANCY | : | <i>pro hac vice application</i> |
| BECKER; MICHAEL D. STRAW; | : | <i>forthcoming</i> |
| JAMES DEPP; JOSEPH P. | : | |
| VICHOT; JUSTIN BEHRENS; | : | |

| | | | |
|------------------------------|---|----------------------|--------------------|
| THOMAS WHITEHEAD; LEE | : | Jonathan P. Lienhard | |
| BECKER; LOUIS CAPOZZI; KIRK | : | (Va. ID No. 41648)** | |
| RADANOVIC; PAUL NYMAN; | : | <i>pro hac vice</i> | <i>application</i> |
| JAMES MAGUIRE, JR.; KRISTINE | : | <i>forthcoming</i> | |
| L. ENG; DONNA COSMELLO; | : | | |
| JAMES FOREMAN; DAVID BALL; | : | Shawn T. Sheehy | |
| JAMES VASILKO; LYNNE RYAN; | : | (Va. ID No. 82630)** | |
| CYNTHIA KIRK; DARYL | : | <i>pro hac vice</i> | <i>application</i> |
| METCALFE; LUKE NEGRON; | : | <i>forthcoming</i> | |
| SUE ANN MEANS; REV. TODD | : | | |
| JOHNSON, MICHAEL HARVEY; | : | | |
| and LOUISA GAUGHEN, | : | | |
| | : | | |
| Proposed Intervenors. | : | | |

| | | |
|------------------------------|---|------------------------------------------|
| RADANOVIC; PAUL NYMAN; | : | Jonathan P. Lienhard |
| JAMES MAGUIRE, JR.; KRISTINE | : | (Va. ID No. 41648)** |
| L. ENG; DONNA COSMELLO; | : | <i>pro hac vice application</i> |
| JAMES FOREMAN; DAVID BALL; | : | <i>forthcoming</i> |
| JAMES VASILKO; LYNNE RYAN; | : | |
| CYNTHIA KIRK; DARYL | : | Shawn T. Sheehy |
| METCALFE; LUKE NEGRON; | : | (Va. ID No. 82630)** <i>pro hac vice</i> |
| SUE ANN MEANS; REV. TODD | : | <i>application forthcoming</i> |
| JOHNSON, MICHAEL HARVEY; | : | |
| and LOUISA GAUGHEN, | : | |
| | : | |
| Proposed Intervenors. | : | |

**APPLICATION FOR LEAVE TO INTERVENE
BY PROPOSED INTERVENORS, THE REPUBLICAN PARTY OF
PENNSYLVANIA AND INDIVIDUAL REPUBLICAN VOTERS**

AND NOW, come Proposed Intervenors, The Republican Party of Pennsylvania Inc., a Pennsylvania non-profit corporation, and individual Republican Voters, (“Proposed Intervenors”), by and through the undersigned counsel, to respectfully submit this Application for Leave to Intervene as Intervenor in the above-captioned proceeding, pursuant to Rule 2327 of the Pennsylvania Rules of Civil Procedure.

I. INTRODUCTION

In the law, as in most other aspects of life, timing is everything. File a lawsuit too late, the case is dismissed for mootness. File a lawsuit too soon, the case is dismissed for ripeness. File a lawsuit at the right time, the plaintiff has standing.

Petitioners bring this lawsuit too early. Because there is not even any draft legislation to challenge, and, in fact, no data that could be used to begin drafting legislation, Petitioners base their theory of standing on the hackneyed maxim: history repeats itself. Of course, contrary to Petitioners' assumption here, history is never verbatim.¹

There are many links in the causal chain connecting Petitioners' prophesied inaction on the part of the legislature and Governor to Petitioners' asserted injuries. If a single one of these causal links are broken, then this Court's assertion of jurisdiction is void *ab initio*. This Court does not first assume jurisdiction and then search for an injury to remedy.

Most fundamentally, the Census Bureau has not released any redistricting data. Especially for one person, one vote purposes, the Census Bureau's redistricting data is historically the most reliable and is therefore the data most commonly used to comply with the one person, one vote requirement. See *Karcher v. Daggett*, 462 U.S. 725, 738 (1983) ("Furthermore, because the census count represents the best population data available, *it is the only basis* for good-faith attempts to achieve

¹ *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 463 (2007) (rejecting the FEC's suggestion of mootness under the "capable of repetition yet evading review" mootness exception, saying: "History repeats itself, but not at the level of specificity demanded by the FEC.").

population equality.”) (internal quotation marks and citation omitted) (emphasis added). Accordingly, when evaluating one person, one vote claims, the census data is the only compilation of data that courts have historically accepted. Neither this Court nor the legislature have access to this data to ascertain which districts are overpopulated. Petitioners ask this Court to assert jurisdiction based on an unreliable guess about the course of future events and which districts are overpopulated.

Because the Census Bureau data is not yet available, and Petitioners acknowledge it will not be available until the end of September, Pennsylvania’s General Assembly has not even initiated the process for drafting redistricting legislation. It has not held hearings, it has not sought information from the various state and local officials as to their interests in the new redistricting map, and it has not sought information from minority groups for the purpose of drawing districts that comply with Section 2 of the Voting Rights Act. The General Assembly cannot begin this task until it has the data. Similarly, the Governor cannot engage in fruitful negotiations with the General Assembly without access to the data. Far from bringing claims that are not yet ripe, Petitioners’ claims are not even budding.

II. PROPOSED INTERVENORS

1. The Republican Party of Pennsylvania is a non-profit corporate entity organized and existing under the Nonprofit Corporation Law of 1988, as amended. The Republican Party of Pennsylvania is the State committee for the Party, a recognized major political party under Pennsylvania law. 25 P.S. § 2831(a); 25 P.S. § 2834. Over 3,000,000 Pennsylvanians are registered Republicans, and the majority of the members of the Pennsylvania House and Senate are Republicans. The Republican Party of Pennsylvania is also the State Committee of the national Republican Party and is accordingly registered with the Federal Election Commission. 52 U.S.C. § 30101(15).

2. Proposed Intervenor, Patricia K. Poprik, is a registered Pennsylvania voter who consistently votes Republican. Ms. Poprik resides in Pennsylvania's First Congressional District in Bucks County where she serves as the County Chair of the Bucks County Republican Committee. Ms. Poprik intends to vote and advocate for the Republican nominee for her Congressional District in the 2022 elections.

3. Proposed Intervenor, David Torres, is a registered Pennsylvania voter who consistently votes Republican. Mr. Torres resides within Pennsylvania's Second Congressional District in Philadelphia County. In

2020, Mr. Torres was the Republican nominee for the U.S. House of Representatives for the Second Congressional District. Mr. Torres may run as a Republican candidate for Pennsylvania's Second Congressional District of the U.S. House of Representatives in 2022. In any event, Mr. Torres intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

4. Proposed Intervenor, Billy Lanzilotti, is a registered Pennsylvania voter who consistently votes Republican. Mr. Lanzilotti resides within the Third Congressional District in Philadelphia County where he actively participates in voter registration activities on behalf of the Republic Party. Mr. Lanzilotti intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

5. Proposed Intervenor, Nancy Becker, is a registered Pennsylvania voter who consistently votes Republican. Ms. Becker resides within Pennsylvania's Fourth Congressional District in Montgomery County where she serves as the Vice Chair of the Montgomery County Republican Committee. Ms. Becker intends to vote and advocate for the Republican nominee for her Congressional District in the 2022 elections.

6. Proposed Intervenor, Michael D. Straw, is a registered Pennsylvania voter who consistently votes Republican. Mr. Straw resides in

the Fifth Congressional District in Media Borough, Delaware County, where he serves as the Chairman of the Media Borough Republican Committee. Mr. Straw intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

7. Proposed Intervenor, James Depp, is a registered Pennsylvania voter who consistently votes Republican. Mr. Depp resides in the Sixth Congressional District in Chester County where he serves as a Republican volunteer on various campaigns for public office. Mr. Depp intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

8. Proposed Intervenor, Joseph P. Vichot, is a registered Pennsylvania voter who consistently votes Republican. Mr. Vichot resides in the Seventh Congressional District in Lehigh County where he serves as the Chairman of the Lehigh County Republican Committee. Mr. Vichot intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

9. Proposed Intervenor, Justin Behrens, is a registered Pennsylvania voter who consistently votes Republican. Mr. Behrens resides in the Eighth Congressional District in Luzerne County where he serves as the Chairman of the Republican Committee of Luzerne County. Mr. Behrens

intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

10. Proposed Intervenor, Thomas Whitehead, is a registered Pennsylvania voter who consistently votes Republican. Mr. Whitehead resides in the Eighth Congressional District in Monroe County where he serves as the Chairman of the Monroe County Republican Committee. Mr. Whitehead intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

11. Proposed Intervenor, Lee Becker, is a registered Pennsylvania voter who consistently votes Republican. Mr. Becker resides in the Ninth Congressional District in Carbon County where he serves as the Chair of the Carbon County Republican Committee. Mr. Becker intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

12. Proposed Intervenor, Louis Capozzi, is a registered Pennsylvania voter who consistently votes Republican. Mr. Capozzi resides in the Tenth Congressional District in Cumberland County where he serves as the Chair of the Cumberland County Republican Committee. Mr. Capozzi intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

13. Proposed Intervenor, Kirk Radanovic, is a registered Pennsylvania voter who consistently votes Republican. Mr. Radanovic resides in the Eleventh Congressional District in Lancaster County where he serves as Chairman of the Lancaster County Republican Committee. Mr. Radanovic intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

14. Proposed Intervenor, Paul Nyman, is a registered Pennsylvania voter who consistently votes Republican. Mr. Nyman resides in the Twelfth Congressional District in Lycoming County where he serves as a Republican volunteer. Mr. Nyman intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

15. Proposed Intervenor, James Maguire, Jr., who is a registered Pennsylvania voter who consistently votes Republican. Mr. Maguire resides in the Twelfth Congressional District in Clinton County where he serves as a volunteer and business owner. Mr. Maguire intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

16. Proposed Intervenor, Kristine L. Eng, is a registered Pennsylvania voter who consistently votes Republican. Ms. Eng resides in the Twelfth Congressional District in Centre County where she serves as the Chairperson of the Centre County Republican Committee. Ms. Eng intends

to vote and advocate for the Republican nominee for her Congressional District in the 2022 elections.

17. Proposed Intervenor, Donna Cosmello, is a registered Pennsylvania voter who consistently votes Republican. Ms. Cosmello resides in the Twelfth Congressional District in Susquehanna County where she serves as the Susquehanna County Republican Chairperson. Ms. Cosmello intends to vote and advocate for the Republican nominee for her Congressional District in the 2022 elections.

18. Proposed Intervenor, James Foreman, who is a registered Pennsylvania voter who consistently votes Republican. Mr. Foreman resides in the Thirteenth Congressional District in Blair County where he serves as the Chairman of the Blair County Republican Committee. Mr. Foreman intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

19. Proposed Intervenor, David Ball, is a registered Pennsylvania voter who consistently votes Republican. Mr. Ball resides in the Fourteenth Congressional District in Washington County where he serves as the Chairman of the Washington County Republican Party. Mr. Ball intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

20. Proposed Intervenor, James Vasilko, is a registered Pennsylvania voter who consistently votes Republican. Mr. Vasilko resides in the Fifteenth Congressional District in Cambria County where he serves as a State Committee Member of the Republican Party of Pennsylvania. Mr. Vasilko intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

21. Proposed Intervenor, Lynne Ryan, is a registered Pennsylvania voter who consistently votes Republican. Ms. Ryan resides in the Sixteenth Congressional District in Lawrence County where she serves as a State Committee Member of the Republican Party of Pennsylvania. Ms. Ryan intends to vote and advocate for the Republican nominee for her Congressional District in the 2022 elections.

22. Proposed Intervenor, Cynthia Kirk, is a registered Pennsylvania voter who consistently votes Republican. Ms. Kirk resides in the Seventeenth Congressional District in Allegheny County where she serves as a State Committee Member of the Republican Party of Pennsylvania. Ms. Kirk intends to vote and advocate for the Republican nominee for her Congressional District in the 2022 elections.

23. Proposed Intervenor, Daryl Metcalfe, is a registered Pennsylvania voter who consistently votes Republican. Mr. Metcalfe resides

in the Seventeenth Congressional District in Butler County where he serves as both a State Representative for Pennsylvania's 12th Legislative District and a State Committee Member of the Republican Party of Pennsylvania. Mr. Metcalfe intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

24. Proposed Intervenor, Luke Negron, is a registered Pennsylvania voter who consistently votes Republican. Mr. Negron resides in the Eighteenth Congressional District in Allegheny County where he was the 2020 Republican nominee for the U.S. House of Representatives for the Eighteenth Congressional District. Mr. Negron may run as a Republican candidate for Pennsylvania's Eighteenth Congressional District of the U.S. House of Representatives in 2022. In any event, Mr. Negron intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

25. Proposed Intervenor, Sue Ann Means, is a registered Pennsylvania voter who consistently votes Republican. Ms. Means resides in the Eighteenth Congressional District in Allegheny County where she serves as a State Committee Member of the Republican Party of Pennsylvania. Ms. Means intends to vote for and advocate for the Republican nominee for her Congressional District in the 2022 elections.

26. Proposed Intervenor, Reverend Todd Johnson, is a registered Pennsylvania voter who consistently votes Republican. Rev. Johnson resides in the Third Congressional District in Philadelphia County. Rev. Johnson intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

27. Proposed Intervenor, Michael Harvey, is a registered Pennsylvania voter who consistently votes Republican. Mr. Harvey resides in the Third Congressional District in Philadelphia County where he was the 2020 Republican nominee for the U.S. House of Representatives for the Third Congressional District. Mr. Harvey may run as a Republican candidate for Pennsylvania's Third Congressional District of the U.S. House of Representatives in 2022. In any event, Mr. Harvey intends to vote and advocate for the Republican nominee for his Congressional District in the 2022 elections.

28. Proposed Intervenor, Louisa Gaughen, is a registered Pennsylvania voter who consistently votes Republican. Ms. Gaughen resides in the Tenth Congressional District in Cumberland County where she serves as a State Committee Member of the Republican Party of Pennsylvania. Ms. Gaughen intends to vote and advocate for the Republican nominee for her Congressional District in the 2022 elections.

29. Many of the Proposed Intervenors are also here in their individual capacities, independent from their status as members of the Republican Party of Pennsylvania. They have invested substantial time, efforts, and resources to support and recruit Republican congressional candidates.

30. Some of the Proposed Intervenors have been congressional candidates themselves and/or are aspiring to be congressional candidates in 2022.

31. Others are involved in recruiting, campaigning, mobilizing, and encouraging voters to support Republican congressional candidates, including participation in Republican fundraisers.

32. Proposed Intervenor The Republican Party of Pennsylvania is responsible for nominating candidates for office and then promoting and supporting those candidates in the general election.

33. Proposed Intervenor The Republican Party of Pennsylvania accomplishes this task through the allocation of substantial resources to the education of voters in a candidate's district, as well as allocating substantial resources to the mobilization of voters within a candidate's district.

III. BASIS FOR PROPOSED INTERVENORS' APPLICATION

34. Pursuant to Pennsylvania Rules of Appellate Procedure 106, 123, and 1531(b), the practice and procedures relating to original jurisdiction

matters are to be in accordance with the Pennsylvania Rules of Civil Procedure.

35. Pennsylvania Rule of Civil Procedure 2327 allows a person not named as a party to seek leave to intervene by filing an application with the court.

36. Proposed Intervenors seek to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(3) and (4), which states, in pertinent part, as follows:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . .

(3) such person could have joined as an original party in the action or could have been joined therein; or,

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa.R.C.P. 2327(3) and (4).

37. Proposed Intervenors could have joined as original parties in the within action or could have been joined therein.

38. The Court's determination of this matter will affect the legally enforceable interests of the Proposed Intervenors.

39. A court must permit a person or entity to intervene in litigation when a ruling in the case “*may* affect any legally enforceable interest of such

person” or entity, regardless of whether the person or entity is bound by the judgment. Pa.R.C.P. 2327(4) (emphasis added).

40. Once a proposed intervenor satisfies this first step, then a court *may* deny intervention only if the proposed intervenor has unduly delayed in applying for intervention, the intervention will unduly delay or prejudice the trial, the interest of the proposed intervenor is already adequately represented, or the proposed intervenors’ claims or defenses are “not in subordination to and in recognition of the propriety of the action.” Pa. R.C.P. 2329.

41. “[T]he effect of Rule 2329 is that if the petitioner is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory, not discretionary, unless one of the grounds for refusal under Rule 2329 is present.” *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999).

42. Where a proposed intervenor satisfies one of the requirements listed in Pa.R.C.P. 2327, refusal to permit intervention under Rule 2329 is not mandatory but only discretionary. *Id.* (“Thus, the court is given the discretion to allow or to refuse intervention only where the petitioner falls within one of the classes enumerated in Rule 2327 *and* only where one of

the grounds under Rule 2329 is present which authorizes the refusal of intervention.”).

43. The ability to protect any legally enforceable interest that *may* be affected by a judgment “should be accorded to anyone having an interest of his own which no other party on the record is interested in protecting.” *Keener v. Zoning Hearing Bd.*, 714 A.2d 1120, 1123 (Pa. Commw. Ct. 1998).

44. Courts in Pennsylvania have frequently granted intervention status to both The Republican Party of Pennsylvania and to Republican voters in challenges to Pennsylvania’s election laws. *See, e.g., League of Women Voters of Pennsylvania*, 178 A.3d at 741 n.5 (noting that the Commonwealth Court permitted intervention to Republican voters from each congressional district, “including announced or potential candidates for Congress and other active members of the Republican Party.”); *Pa. Democratic Party et al. v. Boockvar et al.*, No. 133 MM 2020 (Pa. Sept. 3, 2020) (granting intervention to The Republican Party of Pennsylvania).

45. To protect their interests, The Republican Party of Pennsylvania and individual voter members of the Republican Party of Pennsylvania (“Proposed Intervenors”) file this Application to intervene in the case to ensure their rights are protected.

46. As the U.S. Supreme Court has recognized, The Republican Party of Pennsylvania as a political party has an interest in maintaining and expanding its power within the state government. *Storer v. Brown*, 415 U.S. 724, 745 (1974). It is the party of choice for 3,000,000 Pennsylvanians who look to it for guidance and representation. The U.S. Supreme Court has also recognized that redistricting is fundamentally about the allocation of political power. *See, e.g., Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019).

47. Petitioners are Pennsylvania registered voters who “intend to advocate and vote for Democratic candidates in the upcoming 2022 primary and general elections.” Pet. ¶ 11.

48. Based on the 2019 American Community Survey (“ACS”) estimates, Petitioners allege that they “reside in districts that are *likely* overpopulated...”. *Id.* ¶¶ 12, 25-26 (emphasis added).

49. The reliable 2021 Census data that is used for redistricting—the P.L. 94-171 data—will be released on or around September 30, 2021. *See id.* ¶ 23.

50. Nevertheless, Petitioners want this Court to assume jurisdiction now. *Id.* ¶ 9.

51. Based solely on the 2019 ACS estimates, Petitioners allege that the “existing congressional district configuration is unconstitutionally

malapportioned[]” and, due to a decrease in population, the Census Bureau has allocated Pennsylvania one fewer congressional seat in the next Congress, thereby decreasing Pennsylvania’s number of congressional seats from 18 to 17. *Id.* ¶ 27.

52. Accordingly, Petitioners allege that if elections are held under the current congressional district map, the strength of Petitioners’ votes will be diluted. *Id.* ¶ 28.

53. Petitioners fear that because there is divided government in Harrisburg, the political branches of Pennsylvania’s government will likely be unable to enact a redistricted map by February 15, 2022, the earliest date that candidates could begin circulating nominating petitions. *Id.* ¶ 30.

54. Petitioners allege that these facts violate the U.S. Constitution and federal law—Article I, § 2 requiring districts with equal population “as nearly as is practicable,”² and 2 U.S.C. § 2c requiring that States have the same number of districts as the number of congressional representatives the state is entitled to (Counts II and III)—and Pennsylvania’s Constitution.

55. Petitioners also allege that these circumstances violate Article I, § 5 of Pennsylvania’s Constitution because of the current estimated congressional malapportionment (Count I), and Article 1, § 20 of

² *Karcher*, 462 U.S. at 730.

Pennsylvania's Constitution because, according to Petitioners, it is unlikely that the elected branches of Pennsylvania's government will timely enact a redistricting plan, thereby thwarting the associational rights of Pennsylvanians. (Count IV).

56. To redress these injuries, Petitioners request that this Court declare the current congressional map unlawful under federal and state law; enjoin the Secretary of State and the Director for the Bureau of Election Services and Notaries from giving any effect to the current congressional map;³ give the legislature and governor a deadline by which they must enact a congressional redistricting map (a deadline that does not appear in Pennsylvania's constitution), and, if that deadline passes without action, this Court should draw and enact its own congressional redistricting map. *Prayer for Relief a-d.*

57. If the Democratic Petitioners obtain the relief they seek and the congressional map is drawn either by the Supreme Court of Pennsylvania or under its supervision, The Republican Party of Pennsylvania's interest may be impacted.

³ Notwithstanding the fact that congressional special elections can and do happen. See Order, *League of Women Voters v. Pennsylvania*, No. 159 MM 2017 (Pa. Jan. 22, 2018) (striking down Pennsylvania's then-existing congressional district map but leaving the "unconstitutional" map in place for an impending March 2018 special election).

58. As the State Republican Party, Proposed Intervenor The Republican Party of Pennsylvania allocates substantial resources, both in terms of finances and personnel, to maintaining and increasing its political representation within the State.

59. If Democratic Petitioners obtain the relief they seek, Proposed Intervenor The Republican Party of Pennsylvania may have to divert resources from other programs to mobilize additional efforts to win elections.

60. Proposed Intervenor The Republican Party of Pennsylvania has an interest in advocating for its interests and the interests of its members in an arena that is bi-partisan.

61. Republicans control the General Assembly, and a Democrat controls the Governor's mansion.

62. Democratic Petitioners want to shift control to Pennsylvania's judicial branch, where the majority of the Supreme Court elected Justices are enrolled members of the Democratic Party.

63. If Petitioners are granted the relief they seek, the Petitioners will have succeeded in altering the "environment in which rival parties defend their concrete interests" such as "winning reelection." *Shays v. FEC*, 414 F.3d 76, 86 (D.C. Cir. 2005) (recognizing Article III standing when a change

in regulations “fundamentally alter[s] the environment in which rival parties defend their concrete interests (e.g., their interest in ... winning reelection)”).

64. If the Democratic Petitioners’ relief is granted, this may impact the associational rights of The Republican Party of Pennsylvania. Redistricting legislation involves the same deliberation and negotiation as any other legislation.

65. Proposed Intervenor The Republican Party of Pennsylvania is able to communicate its interests and desires to its members in the General Assembly in the hopes of having some impact on the final legislative product.

66. If the Democratic Petitioners obtain the relief they seek, and the map is drawn by the Supreme Court of Pennsylvania, Proposed Intervenor The Republican Party of Pennsylvania will not be able to communicate its interests to its members who are elected officials and who have the constitutionally vested responsibility to draw maps. See U.S. Const. art. I, sec. 4.

67. Proposed Intervenors have an interest in their elected representatives in the legislature drafting and crafting redistricting legislation without the threat of this Court intervening to draw maps before it is even determined whether a case or controversy exists. See, e.g., *Connor v. Finch*, 431 U.S. 407, 415 (1977) (describing courts drafting and enacting

redistricting legislation as an “unwelcome obligation of performing in the legislature’s stead”); *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 823 (Pa. 2018) (citing *Connor* favorably and stating that the state judiciary’s authority to act in the redistricting realm is the same as that of federal courts).

68. The individual Proposed Intervenors will also be harmed if Petitioners obtain the relief they seek. Given that at its most basic, “the right to vote and the right to have one’s vote counted” is the subject matter of Petitioners’ challenge, *Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002), the Individual Proposed Intervenors have as much right to be in this case as Democratic Petitioners.

69. Each individual Proposed Intervenor is more than a voter. Many are either past or potential future congressional candidates, county Republican chairs, members of the State Party committee, and/or consistent campaign volunteers.

70. These proposed Intervenors are intertwined with and support The Republican Party of Pennsylvania.

71. Potential Republican candidates have an interest in the contours of their respective congressional districts.

72. As redistricting maps are crafted and drafted, these potential candidates and the party officials who support them cannot ascertain whether they will be able to run viable campaigns.

73. It is also potential congressional candidates, incumbents, and the party officials who support them who best understand the current composition of their districts.

74. Transferring the responsibility for redistricting from the legislature to the Supreme Court of Pennsylvania takes redistricting control away from local officials with local knowledge of the current demographic composition of the district. This impacts Republican candidates' interests.

75. County Republican leaders and State Committee leaders must ascertain whether they will be able to assist Republicans in their areas with mobilization efforts that are relatively similar to those of previous years or whether a substantial diversion of resources—both financial and personnel—is necessary to make the districts competitive.

76. Any change to how the redistricting maps are crafted and drafted will necessarily alter the competitive landscape, thereby causing harm to Proposed Intervenors' interests.

77. The goal of a political party is to “gain control of the machinery of state government by electing its candidates to public office.” *Storer*, 415 U.S.

at 745. “Political victory accedes power to the winning party, enabling it to better direct the machinery of government toward the party’s interests.” *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006).

78. The U.S. Supreme Court has also recognized that redistricting is fundamentally about the allocation of political power. See, e.g., *Rucho*, 139 S. Ct. at 2507-08; *Gaffney v. Cummings*, 412 U.S. 735, 753-54 (1973) (stating that redistricting involves legislators seeking to achieve the political ends of the State and its voters through, among other things, recognizing the strength of political parties and thereby allocating political power on the basis of that strength).

79. The Supreme Court of Pennsylvania has also recognized that a political party is injured in redistricting cases when the enacted map causes one political party to be so disadvantaged that it lacks political power. See *Erfer*, 794 A.2d at 332; *League of Women Voters of Pa.*, 178 A.3d at 814 (stating that in partisan gerrymandering claims, a voter who supports the political party not in power has their vote diluted while the party in power has a lasting electoral advantage).

80. The Petitioners seek to short-circuit an inherently political process vested in the political branches of government and transfer that political authority to this Court.

81. If the Democratic Petitioners obtain the ~~relief~~, they seek and the congressional map is drawn either under the supervision of the Supreme Court of Pennsylvania or by the court itself, The Republican Party of Pennsylvania's interests may be impacted.

82. As the State Republican Party, Proposed Intervenor The Republican Party of Pennsylvania allocates substantial resources—both financial resources and manpower—to maintaining and increasing its influence in the State.

83. If Democratic Petitioners obtain the relief they seek, Proposed Intervenor The Republican Party of Pennsylvania may have to divert resources from other programs to mobilize additional efforts to win elections. *See, e.g., Applewhite v. Commonwealth*, 2014 Pa. Commw. Unpublished LEXIS 756, at *21-23 (Pa. Commw. Ct. 2014) (finding that organizational petitioners had standing to challenge Pennsylvania's voter ID law due to the diversion of organizational resources that was necessary to educate voters about the new requirements).

84. Granting authority to this Court to draw districts before any finding of liability would fundamentally alter the constitutional structure whereby a political party ensures that the interests of its members—elected officials and voters—are protected and the party is in a position to win

elections. *Shays*, 414 F.3d at 86 (recognizing Article III standing when a change in regulations “fundamentally alter[s] the environment in which rival parties defend their concrete interests (e.g., their interest in ... winning reelection)”).

85. This is achieved through the political branches of government: Namely, the investigatory and deliberative powers of the legislature and the governor.

86. Transferring responsibility for the act of redistricting from Pennsylvania’s political branches to the judicial branch alters the competitive landscape.

87. It also moves redistricting from an arena where Republicans share power to an arena that is ultimately controlled by Democrats. This alters the competitive landscape and the necessarily bipartisan nature of the redistricting process.

88. Granting Democratic Petitioners their requested relief shifts the ultimate responsibility for redistricting from the constitutionally mandated Pennsylvania Legislature to the Supreme Court of Pennsylvania.

89. This violates Proposed Intervenor The Republican Party of Pennsylvania’s associational interest.

90. Proposed Intervenor The Republican Party of Pennsylvania can communicate with the elected officials who are part of the Party's membership to express concerns about voter mobilization in certain areas of the Commonwealth as well as the deployment of organizational resources.

91. If the crafting and drafting of redistricting legislation is ultimately placed in the Supreme Court of Pennsylvania's hands, however, Proposed Intervenor's associational interest will be diminished.

92. Petitioners request that this Court assume jurisdiction now—before any map is even offered for consideration, much less enacted. Further, Democratic Petitioners request that this Court assume jurisdiction now before any violation has been committed; they merely predict that a violation will occur. Pet. ¶ 9; Prayer for Relief c-d.

93. Proposed Intervenor The Republican Party of Pennsylvania has reason to believe that its competitive interests may be diminished if the Supreme Court of Pennsylvania controls redistricting because the Court's composition is majority Democratic.

94. In 2018, when the Supreme Court of Pennsylvania drew a congressional redistricting map, the Court produced a map that some saw as a favorable Democrat gerrymander. See *Turzai v. Brandt*, No. 17-1700 at 39 (U.S. Pet. for Cert. June 21, 2018) (“Faced with remedying what it

perceived to be a Republican Party-friendly ‘gerrymander,’ the Pennsylvania Supreme Court, with a Democratic Party majority, drew a Democratic Party-friendly gerrymander.”).

95. Proposed Intervenor The Republican Party of Pennsylvania is therefore understandably concerned that Petitioners want to remove control of redistricting from the bi-partisan deliberation between a Republican legislature and a Democratic Governor and transfer it to the Supreme Court of Pennsylvania.

96. Proposed Intervenor The Republican Party of Pennsylvania also risks having to spend additional funds in the event that the legislature passes a redistricting map that is subsequently invalidated by this Court.

97. Otherwise, Proposed Intervenor The Republican Party of Pennsylvania will begin educating voters and candidates about their new legislatively enacted districts ahead of the elections only to then have to reverse course and re-educate voters about the new map ordered by this Court.

98. There is also a distinct risk of confusion to members of The Republican Party of Pennsylvania as any map drawn by the Supreme Court of Pennsylvania is likely to be challenged.

99. The individual Proposed Intervenors also have interests in this case that may be affected by a ruling of this Court.

100. At the outset, the individual Petitioners are registered Pennsylvania voters who intend to advocate and vote for Democratic candidates in the 2022 congressional primary and general elections. Pet. ¶ 11.

101. If this Court finds that Petitioners have standing, then the individual Proposed Intervenors must also have standing in this matter. Individual Proposed Intervenors are also registered Pennsylvania voters who intend to advocate and vote for Republican candidates in the 2022 congressional primary and general elections. Given that at its most basic, “the right to vote and the right to have one’s vote counted” is the subject matter of Petitioners’ challenge, *Erfer*, 794 A.2d at 330, this Court should permit the Individual Republican Voters to intervene in this case since a ruling from this Court will likely affect Intervenors’ right to vote. See *League of Women Voters of Pennsylvania*, 178 A.3d at 741 n.5 (noting that the Commonwealth Court permitted intervention to Republican voters from each congressional district, “including announced or potential candidates for Congress and other active members of the Republican Party.”).

102. Given that this lawsuit involves reapportionment and the right to vote is at stake, these individual Proposed Intervenors have an interest in this litigation.

103. If control over redistricting is ultimately placed in the hands of the Supreme Court of Pennsylvania, a map will be drawn that could harm the interests of Individual Republican Voters. See *Turzai*, No. 17-1700 at 39 (U.S. Pet. For Cert. June 21, 2018).

104. Additionally, individual Proposed Intervenors have an interest in the contours of their congressional districts.

105. As a redistricting plan is crafted and drafted, these potential candidates can ascertain whether they will be able to run viable campaigns. It is also potential congressional candidates and incumbents, along with the party officials who support them, who best understand the current composition of their congressional districts.

106. Removing the responsibility for redistricting from the legislature to the Supreme Court of Pennsylvania takes redistricting control away from local officials with local knowledge of the current demographic composition of the districts.

107. This impacts Republican candidates' interests in ascertaining whether they can run a viable campaign, what resources must be amassed

to successfully campaign, and ultimately deciding whether to campaign for Congress at all.

108. Finally, County Republican leaders and State Committee leaders must ascertain whether they will be able to assist Republicans in their areas with mobilization efforts that are relatively similar to those of previous years or whether a substantial diversion of additional resources—both financial and personnel—will be necessary to make the districts competitive. *Applewhite*, 2014 Pa. Commw. Unpublished LEXIS 756, at *21-23.

109. County Republican officials are actively involved in identifying and recruiting potential candidates who would best represent the constituents of a given congressional district.

110. Additionally, County Republican leaders mobilize efforts to assist incumbents in winning their districts and spend resources encouraging voters in the county to support Republicans.

111. Any change to how the redistricting plans are crafted and drafted will necessarily alter the competitive landscape, thereby causing harm to Proposed Intervenors' interests.

112. Respondents do not adequately represent the interests of the Proposed Intervenors.

113. The Secretary of State is required to receive the primary and general election returns from the county boards of elections and to issue certificates of election to the successful candidates. 25 P.S. § 2621(f).

114. Additionally, the Secretary of State is required to establish the form of nomination petitions and papers. *Id.* § 2621(a).

115. The Secretary of State's job, therefore, is to act as an administrator of elections.

116. By contrast, Proposed Intervenor The Republican Party of Pennsylvania is established to *win* elections. *Storer*, 415 U.S. at 745; *Tex. Democratic Party*, 459 F.3d at 587.

117. The Secretary of State and the Republican Party of Pennsylvania do not share the same interests.

118. Similarly, the individual Proposed Intervenors do not share the same interests with the Secretary. They advocate and vote for Republican candidates. They also identify and encourage candidates to run for public office.

119. The Secretary does not advocate for *any* candidates. The Secretary merely administers the election laws.

120. The Director for the Bureau of Election Services and Notaries similarly does not advocate on behalf of any candidate or party. Instead, the

Bureau “is responsible for planning, developing, and coordinating the statewide implementation of the Election Code...”⁴ Ms. Mathis likewise is an administrator and not an advocate.

121. It is also unlikely that two government Respondents would adequately represent the interests of a political party and members of that party. *See, e.g., Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) (“[W]e look skeptically on government entities serving as adequate advocates for private parties.”).

122. The interests between Respondents and Proposed Intervenors are divergent and therefore not adequately represented. *Allegheny Reproductive Health Ctr.*, 225 A.3d at 913; *Larock*, 740 A.2d at 313-14.

123. If the requirements for the identity of the intervenor are met, intervention shall be granted unless the petition to intervene is unduly delayed. Pa.R.C.P. 2329; *Appeal of the Mun. of Penn Hills*, 546 A.2d 50, 52 (Pa. 1988).

124. The Proposed Intervenors have filed a motion to intervene promptly. Petitioners filed their lawsuit on April 26, 2021. Approximately five

⁴ See <https://www.dos.pa.gov/about-us/Pages/Director-Bureau-of-Elections-and-Notaries.aspx> (Last visited May 18, 2021).

weeks later and before an Answer is filed, Proposed Intervenors have filed this Application to Intervene.

125. On information and belief, the named Respondents do not take the same position as the Proposed Intervenors.

126. Proposed Intervenors seek to intervene as Respondents. They will assert defenses to Petitioners' claims but will not raise claims against the named Respondents that the Petitioners have not raised.

127. If allowed to intervene, Proposed Intervenors intend to file the attached Preliminary Objections, objecting to the petitioners' standing and to the jurisdiction of the Commonwealth Court in this case.

128. If allowed to intervene, Proposed Intervenors intend to file the attached Application for Extraordinary Relief.

WHEREFORE, Proposed Intervenors respectfully request that this Honorable Court enter an Order granting Proposed Intervenors' Application to Intervene in the within case along with any other relief the Court deems appropriate or necessary.

DATED: June 1, 2021

Respectfully Submitted,

By: /s/ Thomas W. King, III
Thomas W. King III
PA. ID No. 21580
tking@dmkcg.com

Thomas E. Breth
PA. ID No. 66350
tbreth@dmkcg.com
Jordan P. Shuber
PA ID No. 317823
jshuber@dmkcg.com

**Dillon, McCandless, King,
Coulter & Graham LLP**
128 West Cunningham Street,
Butler, Pennsylvania 16001,
724-283-2200

Jason B. Torchinsky
(Va. ID No. 47481) ** *pro hac vice
application forthcoming*
Jonathan P. Lienhard
(Va. ID No. 41648) ** *pro hac vice
application forthcoming*
Shawn T. Sheehy
(Va. ID No. 82630) ** *pro hac vice
application forthcoming*

**Holtzman Vogel Baran
Torchinsky Josefiak PLLC**
15405 John Marshall Hwy
Haymarket, VA 20169
[\(540\) 341-8808](tel:(540)341-8808) (P)
[\(540\) 341-8809](tel:(540)341-8809) (F)

Attorneys for Proposed Intervenors

VERIFICATION

I, **ANGELA ALLEMAN**, Executive Director of the Republican Party of Pennsylvania, Inc. verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


A handwritten signature in black ink, appearing to read 'Angela Alleman', written over a horizontal line.

Angela Alleman

Date: May 27, 2021.

VERIFICATION

I, **PATRICIA K. POPRIK**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Patricia K. Poprik

Date: _____, 2021.

VERIFICATION

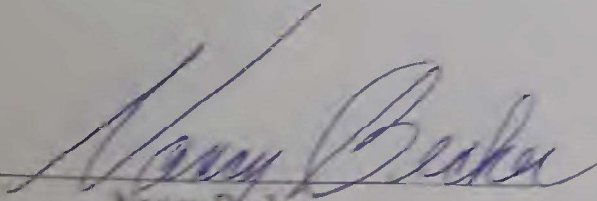
I, **BILLY LANZILOTTI**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Billy Lanzilotti

Date: 5-31, 2021.

VERIFICATION

I, **NANCY BECKER**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

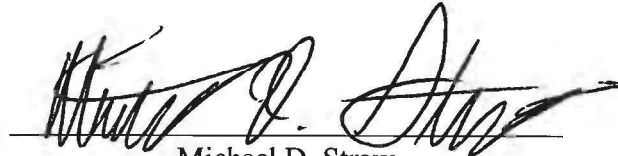


Nancy Becker

Date: 5/28, 2021.

VERIFICATION


I, **MICHAEL D. STRAW**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Michael D. Straw

Date: May 26, 2021.

VERIFICATION

I, **JOSEPH P. VICHOT**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Joseph P. Vichot

Date: May 27th, 2021.

VERIFICATION

I, **JUSTIN BEHRENS**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Justin Behrens

Date: MAY 31, 2021.

VERIFICATION

I, **TOM WHITEHEAD**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

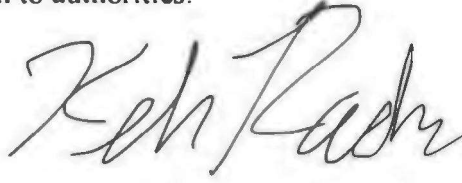
A handwritten signature in blue ink, appearing to read "Tom Whitehead", written over a horizontal line.

Tom Whitehead

Date: May 29, 2021.

VERIFICATION

I, **KIRK RADANOVIC**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "Kirk Radanovic", written in black ink.

Kirk Radanovic

Date: 5/26, 2021.

VERIFICATION

I, **KRISTINE ENG**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

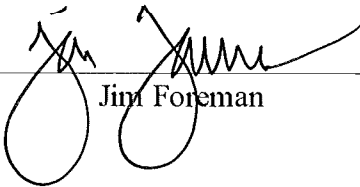


Kristine Eng

Date: 5/27, 2021.

VERIFICATION

I, **JIM FOREMAN**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Jim Foreman

Date: MAY 27, 2021.

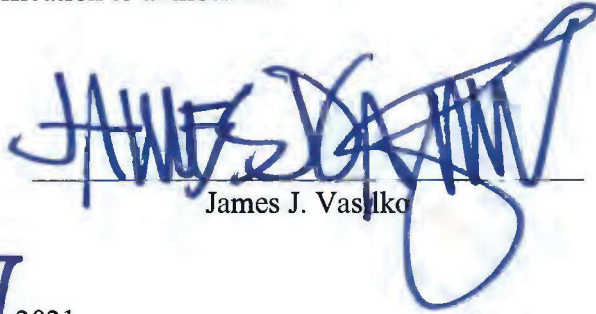
Dave Ball

Dave Ball

_____, 2021.

VERIFICATION

I, **JAMES J. VASILKO**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


James J. Vasilko

Date: MAY 27, 2021.

VERIFICATION

I, **CYNTHIA KIRK**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

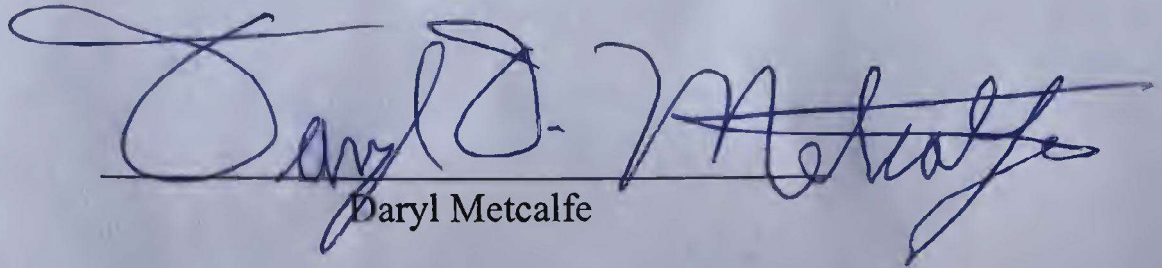


Cynthia Kirk

Date: May 31, 2021.

VERIFICATION

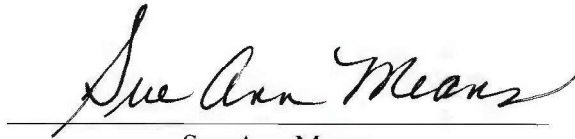
I, **DARYL METCALFE**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Daryl Metcalfe

Date: May 27, 2021.

VERIFICATION

I, **SUE ANN MEANS**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

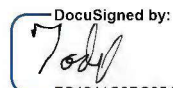


Sue Ann Means

Date: May 27, 2021.

VERIFICATION

I, **REV. TODD JOHNSON**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

DocuSigned by:


EC4241C3BC054C2...

Rev. Todd Johnson

Date: 5/27/2021, 2021.

VERIFICATION

I, **MICHAEL HARVEY**, verify that the facts set forth in the foregoing Application for Intervention are true and correct, to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Michael Harvey

Date: 26 May, 2021.

Date: May 28, 2021.

Louisa Gaughen
Louisa Gaughen

I, LOUISA GAUGHEN, verify that the facts set forth in the foregoing Application for Intervention are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

VERIFICATION

CERTIFICATE OF COMPLIANCE

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

/s/ Thomas W. King, III
Thomas W. King, III

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

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

Respondents,

v.

REPUBLICAN PARTY OF
PENNSYLVANIA, INC.; PATRICIA
K. POPRIK; DAVID TORRES;
BILLY LANZILOTTI; NANCY
BECKER; MICHAEL D. STRAW;
JAMES DEPP; JOSEPH P.
VICHOT; JUSTIN BEHRENS;
THOMAS WHITEHEAD; LEE
BECKER; LOUIS CAPOZZI; KIRK

No.: 132 MD 2021

PROPOSED ORDER

RADANOVIC; PAUL NYMAN; :
JAMES MAGUIRE, JR.; KRISTINE :
L. ENG; DONNA COSMELLO; :
JAMES FOREMAN; DAVID BALL; :
JAMES VASILKO; LYNNE RYAN; :
CYNTHIA KIRK; DARYL :
METCALFE; LUKE NEGRON; :
SUE ANN MEANS; REV. TODD :
JOHNSON; MICHAEL HARVEY; :
and LOUISA GAUGHEN, :
Proposed Intervenors. :

PROPOSED ORDER

AND NOW, this ____ day of _____ 2021, upon consideration of the Proposed Intervenors Application for Leave to Intervene, and any opposition thereto, it is hereby ORDERED that the Proposed Intervenors' Application is GRANTED and Intervenors shall file the Proposed Preliminary Objections attached to their Application for Leave to Intervene forthwith.

_____ J.

Exhibit C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners :

v. :

No. 132 M.D. 2021
Held: August 24, 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of :
the Commonwealth of Pennsylvania; :
Jessica Mathis, in her official :
capacity as Director for the :
Pennsylvania Bureau of Election :
Services and Notaries, :

Respondents :

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

Filed: September 2, 2021

Petitioners¹ filed a petition for review (Petition) addressed to this
Court's original jurisdiction. The Petition seeks, among other things, a

declaration

¹ Petitioners are Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael

that the Commonwealth of Pennsylvania’s 2018 congressional district map is unconstitutional and may not be used for the 2022 election year. Currently, the Court considers three applications for leave to intervene. Speaker of the Pennsylvania House of Representatives Bryan Cutler; Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff; President Pro Tempore of the Pennsylvania Senate Jake Corman; and Majority Leader of the Pennsylvania Senate Kim Ward (collectively, Legislators) filed the first application for leave to intervene. The Republican Party of Pennsylvania and Individual Republican Voters² (collectively, Republican Party) filed the second application for leave to intervene, and Voters of the Commonwealth of Pennsylvania (Voters of Commonwealth)³ filed the third

Guttman, Maya Fonkeu; Brady Hill; Mary Ellen Balchunis, Tom DeWall, Stephanie McNulty, and Janet Temin. Each named petitioner is a United States citizen and registered voter in Pennsylvania and intends to advocate and vote for Democratic candidates. *Id.*

² The application for leave to intervene identifies the following individuals as proposed intervenors: Patricia K. Poprik, David Torres, Billy Lanzilotti, Nancy Becker, Michael D. Straw, James Depp, Joseph P. Vichot, Justin Behrens, Thomas Whitehead, Lee Becker, Louis Capozzi, Kirk Radanovic, Paul Nyman, James McGuire, Jr., Kristine L. Eng, Donna Cosmello, James Foreman, David Ball, James Vasilko, Lynne Ryan, Cynthia Kirk, Daryl Metcalfe, Luke Negron, Sue Ann Means, Reverend Todd Johnson, Michael Harvey, and Louisa Gaughen. *See* Appl. for Leave to Intervene by Proposed Intervenors the Republican Party of Pennsylvania and Individual Republican Voters, ¶¶ 2-28. The application provides each proposed intervenor’s congressional district number; any position within the Republican Party that he or she may hold or has held in the past; where applicable, an indication of whether the individual is considering running for public office; and the individual’s participation in the election process whether it be volunteering/advocating for a Republican candidate or intent to vote for Republican candidates.

³ “Voters of the Commonwealth of Pennsylvania” is not an organization but rather is used to generally refer to the named proposed intervenors in the application. The application is brought on behalf of Haroon Bashir, Vallerie Biancaniello, Debra A. Biro, Tegwyn Hughes, James D. Bee, Richard L. Lawson, David Dillon, Rico Timothy Elmore, Barbara Steinour, James Curtis Jarrett, Jeffrey Wenk, and Donald Beishl, Jr. *See* Appl. for Leave to Intervene by Voters of the Commonwealth of Pennsylvania, ¶¶ 10-21. The application identifies the voter by name, general area of residency and congressional district number, as well as the individual’s intention in voting in the 2022 elections. *Id.* Each allegation also indicates that the proposed intervenor voted for his/her General Assembly representatives with the expectation that the representatives would have the authority to enact a new congressional district map based on the 2020 Census data.

application. All proposed intervenors seek to be aligned with Respondents Veronica Degraffenreid, Acting Secretary of the Commonwealth of Pennsylvania, and Jessica Mathis, Director for the Pennsylvania Bureau of Election Services and Notaries (collectively, Secretary). Petitioners oppose all three applications, while the Secretary opposes only the applications of the Republican Party and Voters of Commonwealth. After hearing held August 24, 2021 and argument on the issue, we grant Legislators' application but deny the applications of the Republican Party and Voters of Commonwealth based on our conclusion that they lack a legally enforceable interest in the Petition and that they could not be named as original parties to the action.

I. Petition for Review

The Petition provides details regarding the results of the 2020 Census, the dates by which the United States (U.S.) Secretary of Commerce must provide the President of the United States and the states with the apportionment data, and the effect of the Covid-19 pandemic on the delivery of that data. The Petition further explains that, while the Commonwealth's population increased from the last decennial census, the 2020 Census shows that the Commonwealth will lose a representative seat in the U.S. House of Representatives. Starting with the upcoming 2022 elections, the Commonwealth will have 17 representatives in the House of Representatives, one fewer than the current 18 representatives. The Commonwealth's congressional district map must be redrawn to accommodate for the loss of a seat in the House of Representatives.

Petitioners claim that the Commonwealth's current congressional districts are malapportioned due to shifts in population within the Commonwealth.

They believe that the congressional districts in which they live are overpopulated, while other districts are underpopulated, and that, consequently, their votes for members of the U.S. House of Representatives are diluted.

The Petition observes that Pennsylvania law does not set a deadline by which a new congressional district map must be put in place prior to the first congressional election following a census. According to Petitioners, it is in the best interest of voters, candidates, and the Commonwealth's entire electoral apparatus to have a new, final congressional district map in place prior to February 15, 2022, the date on which candidates may begin collecting signatures for placement on the primary election ballot.

The Petition informs that the Commonwealth's current congressional district map was drawn by the Pennsylvania Supreme Court in *League of Women Voters of Pennsylvania v. Commonwealth*, 181 A.3d 1083 (Pa. 2018), after the Republican-controlled General Assembly and Democratic Governor failed to agree upon a new congressional district map following the Supreme Court's invalidation of the Commonwealth's 2011 congressional district map. The current political climate has not changed since 2018, as Republican representatives maintain the majority in both houses of the General Assembly and Governor Tom Wolf is a Democrat. For these reasons, Petitioners contend that it is unlikely that the "political branches" of the government will agree upon a new congressional district map.

Petitioners allege that the current congressional district map violates: (1) article I, section 5 of the Pennsylvania Constitution (free and equal elections

clause);⁴ (2) 2 U.S.C. §2c (relating to districting for House of Representatives);⁵ (3) article I, section 20 of the Pennsylvania Constitution (relating to right to petition);⁶ and (4) Article I, Section 2 of the U.S. Constitution (relating to qualifications for member of the House of Representatives).⁷ Petitioners seek a declaration that the

⁴ Article I, section 5 of the Pennsylvania Constitution, PA. CONST. art. I, § 5, states: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

⁵ 2 U.S.C. §2c provides:

In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

⁶ Article I, section 20 of the Pennsylvania Constitution, PA. CONST. art. I, § 20, provides: “The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.”

⁷ Article I, Section 2 of the U.S. Constitution, U.S. CONST. art. I, § 2, provides:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and

Commonwealth's current congressional district map violates the above constitutional provisions; an injunction enjoining the Secretary, her agents, officers, employees, and successors from implementing, enforcing, or giving effect to the 2018 congressional district map; establishment of a schedule that will enable the Court to adopt and implement a new congressional district map by a date certain should the political branches fail to enact such a map by that time; implementation of a new congressional district map that complies with the U.S. and Pennsylvania Constitutions in the event that the political branches do not enact a new map by a date certain; an award of attorneys' fees, costs, and disbursements; and an award of any other relief the Court deems just and proper.

II. Applications for Leave to Intervene

A. Standards for Intervention

Although this matter was filed in the Court's original jurisdiction, the right to intervene is governed by Pennsylvania Rules of Civil Procedure Nos. 2326-

within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

2350. Rule No. 2327, titled “Who May Intervene,” provides in relevant part and as asserted by the proposed intervenors:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if

.....

(3) such person could have joined as an original party in the action or could have been joined therein; or

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa. R.C.P. No. 2327.⁸

Rule No. 2329, titled “Action of Court on Petition,” declares:

Upon the filing of the petition and after hearing, of which due notice shall be given to all parties, the court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention; but an application for intervention may be refused, if

(1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or

(2) the interest of the petitioner is already adequately represented; or

⁸ Pursuant to Pennsylvania Rule of Civil Procedure No. 2328(a), the proposed intervenors attached to their respective applications for leave to intervene copies of the pleading that they would file if permitted to intervene. Each group of proposed intervenors would file preliminary objections to the Petition. Pa. R.C.P. No. 2328(a).

(3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

Pa. R.C.P. No. 2329.

The determination of whether a proposed intervenor has a “legally enforceable interest” calls for “a careful exercise of discretion and consideration of all the circumstances involved,” *Realen Valley Forge Greenes Associates v. Upper Merion Township Zoning Hearing Board*, 941 A.2d 739, 744 (Pa. Cmwlth. 2008) (citations omitted), because the exact boundaries of the “legally enforceable interest” limitation in Rule No. 2327(4) are not clear. *Id.* Nevertheless, an applicant for intervention must have some right, either legal or equitable, that will be affected by the proceedings. *See generally Keener v. Zoning Hearing Board of Millcreek Township*, 714 A.2d 1120, 1122 (Pa. Cmwlth. 1998).

At this point, it is important to note that although we summarize the applications for leave to intervene, the Court has considered the entirety of the applications and supporting briefs, the case law cited therein, the replies to Petitioners’ and the Secretary’s opposition to the intervention applications, and the arguments, testimony and exhibits presented at the August 24, 2021 hearing in our determination of whether to grant intervention in this case.

B. Legislators’ Application

Legislators’ application for leave to intervene asserts that the named legislators are the highest-ranking members of their respective chambers, that the Republican Caucuses of their chambers have authorized them to seek intervention, and that the U.S. Constitution empowers the General Assembly to establish the time, place, and manner of elections to Congress, which includes the authority to redistrict.

See U.S. CONST. art. I, § 4 (stating that the time, place and manner of elections are left to the states' legislatures). Legislators seek to intervene pursuant to Pa. R.C.P. No. 2327(3) and (4) to vindicate their authority to redistrict the Commonwealth.

Legislators' memorandum in support of their application expands upon the reasons why they should be permitted to intervene. They first claim that they could have been named as original parties to the action or could have been joined therein because they have a special interest in the action.⁹ That special interest is Petitioners' alleged desire to divest Legislators of their constitutional authority to conduct congressional redistricting. Legislators also claim that their participation is required by the Declaratory Judgments Act,¹⁰ which mandates that all persons who have or claim any interest that would be affected by a declaration be made parties to the action, and that absent their participation, no declaration may prejudice their rights. 42 Pa. C.S. § 7540(a). Legislators also claim a legally enforceable interest in defending their constitutional authority to prescribe the time, place, and manner of holding elections, which includes the authority to enact congressional district maps. *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787, 808 (2015) ("redistricting is a legislative function, to be performed in

⁹ Legislators claim that they could have been joined as original parties because it is not uncommon for the courts to allow legislators to intervene in actions challenging the constitutionality of, or seeking to alter, redistricting plans. We reject such a blanket assertion. The cases upon which Legislators rely involved legislator participation *after* a redistricting plan was implemented and later challenged.

We also reject any reliance on *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1288 (Pa. Cmwlth. 2019), as supporting the right to intervene based on a special interest. *Sunoco* addressed standing to *initiate* formal complaints before the Pennsylvania Public Utility Commission and did not directly involve the issue of intervention in formal complaint proceedings. Regardless, the Commission's regulations provide the standards upon which intervention may be granted. There is no statutory or regulatory law addressing intervention in cases such as the one currently before the Court.

¹⁰ 42 Pa. C.S. §§ 7531-7541.

accordance with the State’s prescriptions for lawmaking . . .”). They claim that Petitioners asked the Court to take over this process even before the General Assembly has the necessary tools to redistrict and to impose unreasonable deadlines.

The law is well settled as to legislator standing when seeking to intervene. In *Markham v. Wolf*, 136 A.3d 134 (Pa. 2016), legislators sought to intervene in an action challenging an executive order that authorized direct care workers to organize. This Court denied the legislators’ application for leave to intervene, which the Supreme Court affirmed. In doing so, the Supreme Court identified the requirements for legislator standing.

Standing exists only when the legislator’s direct and substantial interest in his or her ability to participate in the voting process is negatively impacted, *see* [*Wilt v. Beal*, 363 A.2d 876 (Pa. Cmwlth. 1976)], or when he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator, *see* [*Fumo v. City of Philadelphia*, 972 A.2d 487 [Pa. 2009),] (finding standing due to alleged usurpation of legislators’ authority to vote on licensing).

Conversely, a legislator lacks standing

where he or she has an indirect and less substantial interest in conduct outside the legislative forum which is unrelated to the voting or approval process, and akin to a general grievance about the correctness of governmental conduct, resulting in the standing requirements being unsatisfied.

Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services, 225 A.3d 902 (Pa. Cmwlth. 2020)¹¹ (quoting *Markham*, 136 A.3d at 145).

The Supreme Court has held that

members of the General Assembly have sufficient interest to participate in legal action in their official capacity and based upon their special status “where there [i]s a discernable and palpable infringement on their authority as legislators.” A legislator’s legal interest has been recognized “to protect [the] legislator’s right to vote on legislation” and “in actions alleging a diminution or deprivation of the legislator’s . . . power or authority.” But, a legislator has no legal interest “in actions seeking redress for a general grievance about the correctness of government conduct.”

Robinson Township v. Commonwealth, 84 A.3d 1054, 1054 (Pa. 2014) (alterations in original; citations omitted) (affirming Commonwealth Court order denying legislators intervention in action challenging constitutionality of amendments to the Oil and Gas Act¹²). The principles of legislator standing are therefore relevant to the issue of whether the putative intervenor has demonstrated the legally enforceable interest required of Pa. R.C.P. No. 2327(4).

We disagree with Petitioners’ claims that Legislators lack a legally enforceable interest in this matter because the Petition does not seek to deprive Legislators of their authority to redistrict the congressional district map and that

¹¹ The opinion appearing at 225 A.3d 902 (Pa. Cmwlth. 2020), addresses legislator standing. Thereafter, on March 26, 2021, the Court issued an order sustaining the respondents’ preliminary objections and dismissing the petition for review. The petitioners filed an appeal to the Supreme Court, which remains pending. See *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* (Pa. Cmwlth., No. 26 M.D. 2019, filed March 26, 2021), *appeal pending*, (Pa., No. 26 MAP 2021).

¹² 58 Pa. C.S. §§ 3201-3274.

Legislators are mischaracterizing the Petition as such. Among other things, the Petition seeks an order establishing a date certain by which the Court will take control of the redistricting process should the General Assembly and Governor fail to act. Pennsylvania law, however, does not establish a date by which a new congressional district map must be put in place. While Petitioners correctly cite *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), for the proposition that there is nothing in the law prohibiting the court from establishing a deadline for enactment of a new congressional map, it is noteworthy that the petitioners in *Mellow* were eight senators who sought nearly the same relief as that sought here, and several members of the state House of Representatives and Senate were permitted to intervene. When the Supreme Court exercised plenary jurisdiction in *Mellow* and appointed a judge of this Court as master to conduct hearings and report to the Supreme Court, Judge Craig directed that the parties, including intervenors, submit their proposed congressional district plans by a date certain.

At this juncture, it is not known how the redistricting process will proceed. But it seems clear that Legislators' ability to legislate would be impaired if the Court imposes a deadline on the General Assembly and the Governor to put in place a new congressional district map and takes control of the redistricting process. Likewise, Legislators would have a legally enforceable interest in the submission of a proposed plan for the Court's consideration if called upon to draw a new congressional district map, as in the *Mellow* case.

We therefore grant Legislators' application for leave to intervene. They have a legally enforceable interest because Pennsylvania law does not prescribe the date by which a new congressional district map must be put in place and because they, as members of the General Assembly, have the constitutional authority to

establish the time, place, and manner of elections, which includes the authority to redistrict. *Arizona State Legislature*. Any potential infringement of that right may diminish or deprive Legislators of their ability to act as legislators.

C. Republican Party’s Application and Voters of Commonwealth’s Application

We next consider the applications for leave to intervene filed by the Republican Party and Voters of Commonwealth. Both applications claim that the Republican Party, including the individual Party Voters, and Voters of Commonwealth could have been named as original parties. We disagree. Clearly, the Republican Party, the individual Republican Voters, and Voters of Commonwealth could not be joined as petitioners because they oppose Petitioners’ requested relief. Similarly, they could not be joined as respondents because Petitioners’ claims do not affect their liabilities. *See* Pa. R.C.P. No. 2229(b) (“A [petitioner] may join as [respondents] persons against whom the [petitioner] asserts any right to relief . . . in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact *affecting the liabilities of all such persons* will arise in the action.”) (emphasis added).¹³ This factor militates against granting the Republican Party’s and Voters of Commonwealth’s applications for leave to intervene.

¹³ The Republican Party notes that the Court has permitted intervention in other cases, specifically *League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n.5 (Pa. 2018). There, the Supreme Court noted that a judge of this Court, acting as master, permitted certain Republican voters, who included announced or potential candidates for Congress and other active members of the Republican Party, to intervene. The Court did not state the basis upon which intervention was granted, and our review of this Court’s docket in *League of Women Voters* (Pa. Cmwlth., No. 261 M.D. 2017), indicates that the Court’s order did not set forth its reasons for granting intervention.

We now address whether the Voters of Commonwealth or the Republican Party has shown a legally enforceable interest. For its part, the Voters of Commonwealth claim that they seek to intervene to preserve the existing framework that the General Assembly and Governor have until the first day to circulate nomination petitions to implement a new congressional district map. They claim that they are “mirror images” of Petitioners because they intend to advocate on behalf of Republican candidates in 2022. Voters of Commonwealth suggest that if the Court grants Petitioners the relief requested, such relief would curtail the ability of the Republican-controlled General Assembly to represent their interests. This would diminish or nullify their votes and would take away local officials’ constitutional duty to redistrict the Commonwealth. Local officials are more familiar with their constituents than Supreme Court jurists.

Voters of Commonwealth suggest that they have a special interest that allows them to intervene, that being that this matter may be of public interest. They allege an inalienable right to express and present their concerns regarding drawing of the congressional district map, and if this Court imposes a date certain by which the political branches must act or takes over the redistricting process, the General Assembly will be divested of its authority to draw the new map.¹⁴ A court drawing

¹⁴ The Court admitted Voters of Commonwealth Exhibit 1, which contains the Affidavits of Tegwyn Hughes, Debra A. Biro, James Curtis Jarrett, James D. Bee, and Jeffrey Wenk, subject to Petitioners’ and the Secretary’s objections to the legal conclusions stated within the affidavits. The Affidavits largely echo the averments in the application for leave to intervene and are uniform for the most part. The affiants attest to their residency, registration as qualified electors in the Commonwealth, regularity in voting, voting with the expectation that their representatives would engage in the redistricting process based on the 2020 Census and ability to contact their representatives, and their intention in contacting their representatives relating to the new congressional district map. Each affiant states that he/she has an interest in the contours of his/her congressional districts and an inalienable right to express to his/her representatives concerns regarding redistricting under the First Amendment, U.S. CONST. amend. I. Further, affiants state that the Secretary does not have authority regarding redistricting and therefore does not represent the affiants’ interest.

the congressional district map will turn a legislative process into a judicial one, according to Voters of Commonwealth. Finally, newly enacted redistricting maps have been subject to voter challenges.

As for a legally enforceable interest, the Republican Party argues that it has an interest in expanding its power within the Commonwealth government and that redistricting is fundamentally about political power. It maintains that it has a legally enforceable interest in (1) the allocation of its resources, (2) advocating for its interest and that of its members in areas that are bipartisan, (3) who draws the new congressional district map, that being the Republican-controlled General

They conclude that they have a substantial and particularized interest in preserving the existing framework that the General Assembly and the Governor have until the first day to circulate nomination petitions to implement a new district plan. Petitioners' requested relief would deprive them of their ability to contact their legislators regarding redistricting, thus nullifying their vote for a representative. Further, Petitioners' request that the Court invalidate the current congressional map would deprive affiants of their right to representation should a special election be needed in their district.

The Court also permitted Voters of Commonwealth to provide an additional exhibit after the proceedings, which Voters filed on August 26, 2021. Voters filed a supplemental affidavit in support of the Voters' application for leave to intervene by Vallerrie Biancaniello. The affidavit is the same as those presented in Voters of Commonwealth Exhibit 1. The Secretary promptly responded, indicating that she does not object to the affidavit on hearsay grounds or the Court's consideration of the affidavit in lieu of live testimony, but she does object to the legal conclusions stated therein. Petitioners object on the same basis as the Secretary.

Upon review, we sustain the objections to the legal conclusions stated within each affidavit, including that: (1) the affiant has a substantial and particularized interest in preserving the existing framework; (2) the requested relief would have the effect of preventing the affiant from being able to interact with the elected representatives regarding redistricting and nullifies the affiants' votes in the 2020 election; (3) if the Court grants the requested relief, the General Assembly will be deprived of its authority to draw new congressional districts and deprive the affiant of his/her ability to provide input to his/her representative thus infringing on the affiant's free speech rights; (4) the affiants' votes would be nullified and their interests of having their representatives exercise their full scope of constitutional duties with respect to redistricting would be infringed; and (5) the affiants could be deprived of their right to representation if the current map is declared unconstitutional and a special election must take place before a new map is enacted. In sustaining the objections to the Exhibits, we did not consider the stated conclusions in our disposition of this matter.

Assembly or the Justices of the Supreme Court, who are mostly Democrats, (4) a change in the environment in how rival parties defend their concrete interests, (5) recruiting of candidates, (6) risk of confusion to voters, and (7) associational interests.¹⁵ *See* PA. CONST. art. I, § 20 (“The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested

¹⁵ The Republican Party presented the testimony of Angela Alleman, Executive Director of the Pennsylvania GOP. Mrs. Alleman oversees all operations of the Party. She explained her concerns if the Supreme Court draws the congressional district map, including the removal of power to do so by the General Assembly, the Party’s ability to work with its legislators to influence the map but inability to advocate before the Supreme Court, and the Party’s diversion of funds to have experts prepare and analyze any map drawn by the Supreme Court. She believes that it is unfair to create a deadline for the General Assembly to act, especially when it is not clear when the 2020 Census data will be available. Mrs. Alleman stated that the uncertainty of the congressional district map affects candidate recruitment and makes it impossible for incumbents to know whether their districts will be realigned and the possibility that if realigned, whether the incumbent will be running against another incumbent. She acknowledged that regardless of who draws the new congressional district map, the Republican Party will have to spend money to educate voters, and for “get out and vote” campaigns. Mrs. Alleman agreed that Republican Party members may speak to their legislators regardless of who draws the map, and that the Republican Party has no power to make the General Assembly do what the Party wants. For Mrs. Alleman, the issue with the Petition is the request for a deadline by which the General Assembly and Governor must act and the allocation of the Party’s resources depending on who draws the congressional district map. She believes that if the General Assembly draws the map, the Republican legislators will negotiate the best possible map for the Party. Expenses the Republican Party would incur if the Supreme Court draws the map include legal fees, including fees for intervening in this action, expert fees for analyzing and preparing maps, and the diversion of the Party’s resources. The Court finds Mrs. Alleman’s testimony credible but not persuasive on the issue of whether the Republican Party has a legally enforceable interest.

The Court admitted 12 affidavits of the individual Republican Party members: Nancy Becker, James Depp, Thomas Whitehead, Louis Capozzi, Kirk Radanovic, Kristine L. Eng, David Ball, James Vailko, Daryl Metcalfe, Sue Ann Means, and Michael Harvey, and Justin Behrens. The affidavits are substantially the same and attest that the affiant is a U.S. citizen and registered voter in Pennsylvania; the district in which the affiant resides; the affiant’s participation in the election-related/Republican Party activities; the affiant is a long-time supporter of the Republican party; and that Petitioners’ and the Secretary are affiliated with the affiant’s political opponents, and that, therefore, they will not advocate for a congressional district map that represents the affiant’s interest as a supporter and/or official of the Republican Party. The affidavits also attest to the affiant’s resources invested in advocating on behalf of the Republican Party, including activities that may be affected by the Supreme Court’s drawing of the congressional district map.

with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.”).

First, the Court rejects the Voters of Commonwealth and the Republican Party’s argument that because they have a special interest in the matter, they are permitted to intervene. Both proposed intervenors rely on *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Cmwlth. 2019), but in that case, the primary issue was whether a senator had standing, either as a legislator or as a private citizen, to initiate a formal complaint with the Pennsylvania Public Utility Commission; the question of intervention was not at issue in *Sunoco*. The brief discussion of intervention was limited to distinguishing between standing to initiate a formal complaint and standing to intervene, which the Commission’s regulations expressly address. Years ago, in *Application of Biester*, 409 A.2d 848 (Pa. 1979), our Supreme Court established the standards for intervention. In *Biester*, a taxpayer sought to intervene in an action seeking to impanel a statewide investigative grand jury. The Court, after initially allowing the taxpayer to intervene, later vacated its order granting intervention. The Court determined that to intervene, the taxpayer must meet the “substantial, direct, and immediate” test set forth in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). That standard remains the law in this Commonwealth. *Markham*, 136 A.3d at 139 (“in order to intervene, individuals must have standing, Pa. R.C.P. [No.] 2327(3), (4), and to establish standing, one must have an interest that is substantial, direct[,] and immediate”). To have a substantial interest, the proposed intervenor’s concern in the outcome of the action must surpass “the common interest of all citizens in procuring obedience to the law.” *Markham*, 136 A.3d at 140. An interest is direct if the matter will cause

harm to the party's interest, and the concern is immediate "if that causal connection is not remote or speculative." *Id.*

We conclude that the Voters of Commonwealth and individual Republican Voters fail to meet the "substantial, direct, and immediate" test. Neither the individual Republican Voters, regardless of political interest, or Voters of Commonwealth have an interest that surpasses the interest of all qualified and registered voters in the Commonwealth. Based on the preliminary 2020 Census data, the Commonwealth will lose a seat in the U.S. House of Representatives and thus our current congressional district map must be redrawn. As counsel for Voters of Commonwealth stated, the current congressional district map is malapportioned across the state. *Every elector*, therefore, has an interest in redrawing a congressional district map that meets constitutional standards. Thus, the individual Republican Voters and Voters of Commonwealth do not have a substantial interest that surpasses the common interest of all citizens.¹⁶

The Republican Party, identified as non-profit organization, has no legally enforceable interest either. Based on our review, it appears that the Republican Party is complaining about what role it may play in the redistricting process, a role that is not protected by law. Redistricting, however, is fundamentally about protecting the one-person one-vote principle, that is, all votes have equal power as near as possible. *See Gray v. Sanders*, 372 U.S. 368, 381 (1963); *Holt v. 2011 Legislative Reapportionment Commission*, 38 A.3d 711, 739 (Pa. 2012). The

¹⁶ We further disagree that Voters of Commonwealth are the "mirror image" of Petitioners because they will advocate for Republican candidates in 2022, whereas, Petitioners allege, they will advocate for Democratic candidates. Petitioners allege that the congressional districts in which they live are overpopulated as evidenced by the 2020 Census and, thus, their voting power is diluted. *See Voters of Commonwealth*, Appl. for Leave to Intervene, ¶¶ 10-21. Voters of Commonwealth do not speculate how their congressional districts may be affected by redistricting.

activities of the Republican Party, and how the Party allocates its resources, do not constitute a legally enforceable interest in how the congressional district map is determined and by whom. The case law cited by the Republican Party does not stand for the proposition that the asserted interests constitute legally enforceable interests sufficient to confer standing to intervene. The case law cited by the Secretary, rather, suggests otherwise and is more persuasive. *Cf. Gill v. Whitford*, 138 S. Ct. 1916, 1932 (2018) (recognizing that under the U.S. Supreme Court’s precedent, achieving a party majority in the legislature is a collective political interest, not an individual legal interest recognized by law); *see also Pennsylvania Voters Alliance v. Centre County*, 496 F. Supp. 3d 861, 868 (M.D. Pa. 2020) (recognizing that “‘statewide harm’ to a voter’s interest in ‘collective representation in the legislature’” or “in ‘influencing the legislature’s overall composition and policymaking’” is insufficient to support standing under Article III of the U.S. Constitution, U.S. CONST. art. III; “[t]o the extent that the latter interest is recognized, it is ‘embodied in [an individual’s] right to vote for [his or her] representative’”) (quoting *Gill*, 138 S. Ct. at 1931); *Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002) (recognizing that Democratic committee lacked standing to challenge reapportionment plan because it was not an entity authorized to exercise the right to vote), *abrogated on other grounds by League of Women Voters*, 178 A.3d 737.

Moreover, we conclude that the Republican Party’s, individual Republican Voters,’ and Voters of Commonwealth’s claimed interests are speculative and not immediate. The U.S. Census Bureau has released the redistricting data to the states, with the final redistricting data toolkit to be delivered by September 30, 2021. *See* [https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census results.html](https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census%20results.html) (last visited August 30, 2021).

Therefore, our General Assembly can begin the process of moving forward with a new congressional district plan based on the Census data received. There is nothing preventing the Voters of Commonwealth, the individual Republican Voters, and the Republican Party from exercising their First Amendment and associational rights to make their positions known to their respective legislators.

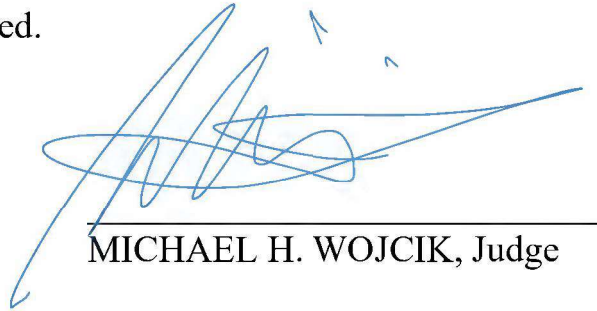
Because we conclude that the Republican Party, the individual Republican Voters, and Voters of Commonwealth have failed to show that they have legally enforceable interests in these proceedings, we deny their applications for leave to intervene.

III. Conclusion

The General Assembly and the Governor are vested with authority to draw a new congressional district map. Pennsylvania law, however, does not provide a date by which they must act. The relief that Petitioners seek, the setting of a deadline by which the political branches must act, or taking control of the redistricting process, potentially infringes upon that authority. Accordingly, Legislators have shown a legally enforceable interest entitling them to intervene in this matter. *Markham; Allegheny Reproductive Health Center*; Pa. R.C.P. No. 2327(4).

Conversely, the Republican Party and Voters of Commonwealth have failed to demonstrate that they could be joined as original parties to the action or that they have a legally enforceable interest that would entitle them to intervene in this matter. Pa. R.C.P. No. 2327(3), (4).

Accordingly, the application for leave to intervene filed by Legislators is granted, and the applications for leave to intervene filed by the Republican Party and Voters of Commonwealth are denied.



MICHAEL H. WOJCIK, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners :

v. :

No. 132 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of :
the Commonwealth of Pennsylvania; :
Jessica Mathis, in her official :
capacity as Director for the :
Pennsylvania Bureau of Election :
Services and Notaries, :

Respondents :

ORDER

NOW 2nd day of September, 2021, upon consideration of the Applications for Leave to Intervene filed on behalf of (1) Speaker of the Pennsylvania House of Representatives Bryan Cutler, Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff, President Pro Tempore of the Pennsylvania Senate Jake Corman, and Majority Leader of the Pennsylvania Senate Kim Ward (collectively, Legislators); (2) the Republican Party of Pennsylvania and Individual Republican Voters (collectively, Republican Party); and (3) Voters of the

Commonwealth of Pennsylvania (Voters of Commonwealth), and after hearing and argument on the issue, it is hereby ordered as follows.

Legislators' Application for Leave to Intervene is **GRANTED**. The Prothonotary shall accept for filing Legislators' Preliminary Objections to the Petition for Review, attached to Legislators' June 1, 2021 Application for Leave to Intervene.

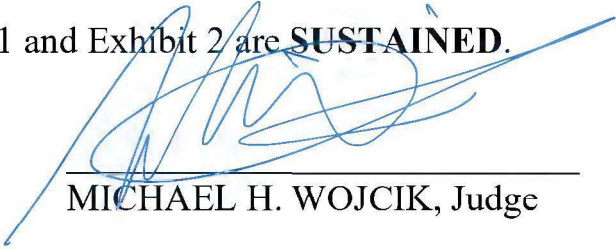
Respondents¹ shall file and serve their brief in support of their preliminary objections (4 copies) within 14 days of the exit date of this order.

Legislators shall file and serve their brief in support of their preliminary objections (4 copies) within 14 days of the exit date of this order. Petitioners shall file and serve their brief in opposition to Legislators' preliminary objections within 14 days of service of Legislators' brief. Upon completion of the briefing schedule, the Prothonotary shall list the preliminary objections on the appropriate argument list.

The Applications for Leave to Intervene filed by the Republican Party and the Voters of the Commonwealth are **DENIED**. The Republican Party's Application for Extraordinary Relief, attached to its Application for Leave to Intervene, is **DISMISSED AS MOOT**.

¹ Although Respondents filed preliminary objections, it appears that they have not filed their brief in support thereof. Petitioners, however, filed their brief in opposition to Respondents' preliminary objections on August 2, 2021.

Voters of the Commonwealth Exhibits 1 and 2 are admitted to the record. Petitioners' and Respondents' objections to the legal conclusions in the Voters of the Commonwealth's Exhibit 1 and Exhibit 2 are **SUSTAINED**.



MICHAEL H. WOJCIK, Judge