
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

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APPLICATION FOR EXPEDITED REVIEW

Pursuant to Pennsylvania Rule of Appellate Procedure 123, the *Carter* Petitioners request that this Court expedite its current schedule for remedying the unconstitutional malapportionment of Pennsylvania’s congressional districts. In an order entered yesterday declining to exercise extraordinary jurisdiction over this case at this time, the Pennsylvania Supreme Court noted that its “denial is without prejudice to Petitioners to file an application in the Commonwealth Court, requesting that court to accelerate the timetable set forth in its December 20, 2021 scheduling order.” Order, *Carter v. Degraffenreid*, No. 141 MM 2021 (Pa. Jan. 10, 2022). The *Carter* Petitioners now seek such relief and propose an alternative to the *Gressman* Petitioners’ proposed expedited schedule. See *Gressman Pets.’ App. for Expedited Review, Carter v. Degraffenreid*, Nos. 464 MD 2021, 465 MD 2021, ¶ 6 (Pa. Commw. Ct. Jan. 11, 2022).

In just a few short weeks, Pennsylvania’s voters, congressional candidates, and its Department of State need a final and legally binding constitutional congressional reapportionment plan. But there is no such plan in sight. Expedited judicial consideration of redistricting is thus necessary to ensure that Pennsylvania’s 2022 congressional primary election can proceed as scheduled under a lawful

congressional map.

The *Carter* Petitioners agree with the *Gressman* Petitioners that this Court's December 20 scheduling order does not permit sufficient time for the parties to seek appellate review in the Supreme Court before election activities must commence, *see infra* ¶ 4. The *Carter* Petitioners also agree that there is no need for discovery or an evidentiary hearing. The *Carter* Petitioners ask this Court to adopt an accelerated schedule similar in structure to that proposed by the *Gressman* Petitioners. However, the *Carter* Petitioners propose different deadlines that will give all parties, as well as the Court, sufficient time to prepare, respond to, and consider submissions while also allowing the political branches an opportunity to act before January 30, consistent with this Court's December 20, 2021 order. The proposed deadlines are as follows:

- Any party to this proceeding who wishes to submit for the Court's consideration one proposed 17-district congressional redistricting plan that is consistent with the results of the 2020 Census shall file the proposed plan and, if the party chooses to do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on Friday, January 21, 2022. A party may not later modify or amend its proposed plan.
- Any party to this proceeding may file a responsive brief and/or a responsive expert report (from the same expert who prepared the January 21 report or any

other expert), addressing other parties' January 21 submissions, by 5:00 p.m. on Wednesday, January 26, 2022.

- The Court shall hold oral argument to consider all timely filed proposed congressional redistricting plans on Friday, January 28, 2022.
- By 5:00 p.m. on Monday, January 31, 2022, the Court shall issue its final judgment selecting a congressional redistricting plan from among those plans that were timely filed by the parties on January 14.

For the reasons stated by the *Gressman* Petitioners, the *Carter* Petitioners respectfully suggest that this Court (1) eliminate the evidentiary hearing and (2) set a deadline for its decision that will allow for any appeal of that decision to be filed and resolved by the Supreme Court as quickly as possible and before candidates circulate their nomination papers.

On January 11, 2022, the *Carter* Petitioners gave Respondents notice of this application, and Respondents stated that they were unable to take a position on the application in the time available before its filing.

In support of this application and proposed schedule, the *Carter* Petitioners state as follows:

1. On December 17, 2021, the *Carter* and *Gressman* Petitioners filed actions in this Court, seeking relief under the Pennsylvania Constitution for the unconstitutional malapportionment of Pennsylvania's current congressional district

map.

2. On December 20, 2021, this Court issued a scheduling order that gives the parties until January 28 to file their proposed congressional plans; gives the General Assembly and the Governor until January 30 to enact a plan; and, if the political branches fail to act, sets January 31 as the first day of a “final hearing . . . to receive evidence and consider all timely filed proposed plans.” Order, *Carter v. Degraffenreid*, Nos. 464 MD 2021, 465 MD 2021 (Pa. Commw. Ct. Dec. 20, 2021). The scheduling order does not set a deadline for the Court’s decision selecting one of the proposed plans timely filed by the parties. *Id.*

3. Both the *Carter* and *Gressman* Petitioners filed applications asking the Supreme Court to exercise its King’s Bench power or extraordinary jurisdiction over their challenges and to expedite the Court’s review. On January 10, 2022, by a five-to-two vote, the Supreme Court denied the jurisdictional application without prejudice “to reapply for similar relief” in the Supreme Court, “as future developments may dictate,” and instructed that its “denial is without prejudice to Petitioners to file an application in the Commonwealth Court, requesting that court to accelerate the timetable set forth in its December 20, 2021 scheduling order.” Order, *Carter v. Degraffenreid*, No. 141 MM 2021 (Pa. Jan. 10, 2022).

4. Respondents in this proceeding have represented that “a new district map must be in place, so that the boundaries of the new congressional districts are

known to candidates, before the circulation of nomination petitions can begin” on February 15, 2022. Resp’ts’ Answer to Pets.’ App. for Extraordinary Relief, *Carter v. Degraffenreid*, No. 141 MM 2021, 3 (Pa. Dec. 27, 2021) (quoting 25 P.S. § 2873)). Respondents further represented that, “the Department of State and county boards of elections require some lead time prior to the circulation of nomination petitions—normally about three weeks—to allow them to update the Statewide Uniform Registry of Electors (SURE) system, provide timely notice to candidates, and otherwise implement the new congressional districts.” *Id.*

5. There is insufficient time for the political process to produce a legally binding congressional map before the primary nomination process begins. The General Assembly adjourned its legislative session on December 15, 2021 without enacting a new congressional district map. On December 28, 2021, Governor Wolf circulated a letter summarizing his criticisms of the preliminary congressional plan, suggesting he would veto it.¹

6. That said, this Court’s December 20, 2021 scheduling order allowed additional time for the political branches to produce a map. This Court set a deadline for the General Assembly and the Governor to come to agreement on a plan by

¹ Governor Tom Wolf, Letter to the Honorable Bryan Cutler, Speaker, Pennsylvania House of Representatives, and the Honorable Kerry Benninghoff, Pennsylvania House of Representatives, Dec. 28, 2021, *available at* <https://www.governor.pa.gov/wp-content/uploads/2021/12/12.28.21-TWW-Cutler-Benninghoff-HB-2146-Final.pdf> (last visited Jan. 10, 2022).

January 30, 2022. The *Carter* Petitioners’ proposed schedule does not require this Court to make any decision before the January 30 deadline it set to see whether the political branches would act—it just contemplates that this Court would act as expeditiously as possible after that date.

7. A judicial remedy is required to address the unconstitutional malapportionment of Pennsylvania’s congressional districts. Because the Supreme Court has declined for now to exercise King’s Bench power or extraordinary jurisdiction over this matter, judicial redistricting must be expedited to account for both the imminence of the 2022 primary season and the time it will take to resolve any appeal from this Court’s decision.

WHEREFORE, for the foregoing reasons, the *Carter* Petitioners respectfully request that the Court enter their requested accelerated schedule, as set forth in the accompanying proposed order.

Dated: January 11, 2022

Respectfully submitted,

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[PROPOSED] ORDER

AND NOW, this ___ day of January, 2022, in consideration of the application for expedited review filed in the above-consolidated actions, it is hereby ORDERED:

1. This Order supersedes this Court's December 20, 2021 Order.
2. Any party to this proceeding who wishes to submit for the Court's consideration one proposed 17-district congressional redistricting plan that is consistent with the results of the 2020 Census shall file the proposed plan and, if the party chooses to do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on Friday, January 21, 2022. A party may not later modify or amend its proposed plan.
3. Any party to this proceeding may file a responsive brief and/or a responsive expert report (from the same expert who prepared the January 21 report or any other expert), addressing other parties' January 21 submissions, by 5:00 p.m. on Wednesday, January 26, 2022.
4. No party may take discovery in this matter.
5. The Court shall hold oral argument to consider all timely filed proposed congressional redistricting plans on Friday, January 28, 2022. This hearing shall be oral argument only and is not an evidentiary hearing.
6. By 5:00 p.m. on Monday, January 31, 2022, the Court shall issue its final judgment selecting a congressional redistricting plan from among those plans

that were timely filed by the parties on January 21.