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COMMONWEALTH COURT  
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of Pennsylvania*

**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  
the Pennsylvania Bureau of Election Services and Notaries,

Respondents.

PHILIP T. GRESSMAN; RON Y. DONAGI;  
KRISTOPHER R. TAPP; PAMELA GORKIN;  
DAVID P. MARSH; JAMES L. ROSENBERGER;  
AMY MYERS; EUGENE BOMAN; GARY GORDON;  
LIZ MCMAHON; TIMOTHY G. FEEMAN; and  
GARTH ISAAK,

Petitioners,

No. 464 MD 2021

No. 465 MD 2021

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 the Pennsylvania Bureau of Election Services and Notaries,

Respondents.

**PROPOSED INTERVENOR GOVERNOR WOLF’S ANSWER TO THE  
GRESSMAN PETITIONERS’ AND CARTER PETITIONERS’  
APPLICATIONS FOR EXPEDITED REVIEW**

Proposed Intervenor Tom Wolf, Governor of the Commonwealth of Pennsylvania, submits this Answer to the *Carter* Petitioners’ Application for Expedited Review (the “*Carter* Application”) and the *Gressman* Petitioners’ Application for Expedited Review (the “*Gressman* Application”) (collectively, the “Applications”).

Governor Wolf agrees with Petitioners that, given the continuing absence of a legislatively enacted redistricting plan, expedited judicial consideration of reapportionment is the best way to ensure that Pennsylvania has a lawful congressional district map in place for the 2022 primary election. As set forth below, however, Governor Wolf does not agree with all of the specific aspects of Petitioners’ proposals. With limited exceptions, the timeline proposed by the *Carter* Petitioners strikes an appropriate balance between the need for expedited consideration and the need to afford the parties sufficient time to litigate the case.

But the Court should retain the current schedule's provision for an evidentiary hearing, which Petitioners' proposed schedules omit.

**I. THE *CARTER* PETITIONERS' PROPOSED TIMELINE GENERALLY STRIKES THE RIGHT BALANCE**

Both Applications endeavor to propose a schedule that will provide the parties with adequate time to submit a proposed congressional district map while also accounting for impending election deadlines. The *Carter* Application strikes the better balance, however, as the *Gressman* Petitioners' schedule is too compressed; it simply does not provide enough time for the parties to finalize a congressional district map proposal and submit supporting briefs and expert reports (which, under the current schedule, are not due until January 28, 2022).<sup>1</sup> The *Carter* Application proposes the following briefing submission deadlines:

- Friday, January 21, 2022 – submission of proposed congressional district maps and supporting briefs and expert reports.
- Wednesday, January 26, 2022 – submission of responsive briefs and responsive expert reports.

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<sup>1</sup> According to the *Gressman* Petitioners, their proposed schedule is motivated by their desire to conclude the litigation by January 24, the date by which Respondents have stated that a final map needs to be in place to avoid changes to the current election calendar. But this goal, while well-intentioned, does not account for the additional time required for appellate review by the Supreme Court. As Respondents explain, “under *any* realistic schedule ordered by the Court, it is now clear that there will need to be modifications to at least some of the deadlines in the 2022 primary election calendar.” Respondents' Answer to the *Gressman* Petitioners' and *Carter* Petitioners' Applications for Expedited Review at 3. Of course, any disruptions to the calendar should be minimized. But the breakneck pace required by the *Gressman* Petitioners' schedule would not obviate the need to modify the existing election calendar in at least some respects.

- Friday January 28, 2022 – hearing on timely filed proposed congressional redistricting plans.

Governor Wolf generally supports that schedule for the parties’ written submissions, but proposes (1) moving the deadline for submission of responsive briefs and responsive expert reports forward one day, to Tuesday, January 25, 2022, (2) and moving the hearing on submissions forward one day, so that it begins Thursday, January 27, 2022. This modification will provide the Court the opportunity to conduct a two-day hearing, if needed, while still concluding on January 28, 2022, and still giving the parties one day to review responsive submissions before the hearing. Governor Wolf also respectfully submits that the parties’ January 21 submissions should also address potential modifications to the election calendar.

## **II. THE COURT SHOULD ADHERE TO ITS INITIAL PLAN TO CONDUCT AN EVIDENTIARY HEARING AFTER RECEIVING ALL SUBMISSIONS**

In the December 20, 2021 Scheduling Order, the Court stated: “In the event the Court must select a congressional reapportionment plan, the Court will hold a final hearing beginning on January 31, 2022, to receive evidence and consider all timely filed proposed plans. The Court will also consider revisions to the 2022 election schedule/calendar as part of the hearing.” *See* Order dated December 20, 2021. Governor Wolf proposes that the Court conduct the evidentiary hearing and

consider revisions to the 2022 election schedule as initially intended, with the only change being that the hearing begin January 28, 2022, following the new deadline for submission of responsive briefs and responsive expert reports.

The *Gressman* Application proposes eliminating the evidentiary hearing, reasoning that, because “the current congressional map is indisputably malapportioned, and thus indisputably unconstitutional, extensive factfinding is not necessary here.” *Gressman* Application ¶ 7a.<sup>2</sup> This overlooks, however, that the evidentiary hearing will allow the parties to cross-examine the other parties’ experts and will allow the Court to ask questions of the experts. Such testing will cast light on the experts’ methodologies in preparing the proposed congressional district maps and help illuminate the respective virtues and disadvantages of the different proposed plans. It will also permit the Court to receive testimony (if the Court desires) regarding the administrative feasibility of various potential changes to the election calendar.

There is strong precedent supporting this course—the Court held a similar evidentiary hearing in *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), the most recent prior example of “impasse” litigation following a decennial census in

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<sup>2</sup> The *Carter* Application joins the *Gressman* Application in this respect. See *Carter* Application at 3.

Pennsylvania. *See id.* at 206. Governor Wolf respectfully submits that this Court should follow the same procedure here.

### III. GOVERNOR WOLF’S PROPOSED SCHEDULE FOR EXPEDITED REVIEW

In summary, Governor Wolf proposes that the Court adopt the following schedule for expedited review:

<u>Date</u>	<u>Description</u>
January 21, 2022	<p data-bbox="618 695 1300 852"><u>Submission of (1) proposed congressional redistricting plans and supporting briefs and expert reports and (2) proposed revisions to the 2022 election schedule/calendar.</u></p> <p data-bbox="618 873 1300 1440">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 plan submitted to the Court for its consideration shall include an ESRI shape file expressing the plan. ESRI shape files shall be submitted to the Court via USB drive and shall be served on all other parties.<sup>3</sup></p> <p data-bbox="618 1461 1300 1619">Any party to this proceeding who wishes to address potential revisions to the 2022 election schedule/calendar shall do so in a brief filed by 5:00 p.m. on Friday, January 21, 2022.</p>

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<sup>3</sup> This was the procedure for submission of shape files directed by the Supreme Court in *League of Women Voters v. Commonwealth*, No. 159 MM 2017. This Court may wish to utilize a different procedure, but Governor Wolf respectfully requests that the Court prescribe some specific procedure for filing (and serving) shape files, which cannot be submitted via PACFile.

January 25, 2022	<p><u>Submission of responsive briefs and responsive expert reports.</u></p> <p>Any party to this proceeding may file a responsive submission 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.</p>
January 27, 2022	<p><u>Evidentiary hearing and oral argument.</u></p> <p>The Court will hold a final hearing beginning on January 27, 2022, to receive evidence and consider all timely filed proposed plans. The Court will also consider revisions to the 2022 election schedule/calendar as part of the hearing.</p>

Respectfully submitted,

HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER

Dated: January 12, 2022

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## CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

Dated: January 12, 2022

/s/ Robert A. Wiygul  
Robert A. Wiygul