

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA
PARRILLA; REBECCA
POYOUROWN; 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.

CASES CONSOLIDATED

No. 464 M.D. 2021

LEIGH M. CHAPMAN, in
her official capacity as the Acting
Secretary of the Commonwealth of
Pennsylvania; JESSICA MATHIS, in
her official capacity 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,

LEIGH M. CHAPMAN, in
her official capacity as the Acting
Secretary of the Commonwealth of
Pennsylvania; JESSICA MATHIS, in
her official capacity as Director for the
Pennsylvania Bureau of Election
Services and Notaries,

Respondents.

**TRIAL BRIEF OF INTERVENOR, REPRESENTATIVE JOANNA E.
MCCLINTON, LEADER OF THE DEMOCRATIC CAUCUS OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES**

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I. INTRODUCTION

Pursuant to Pa. R. App. P. 106, Intervenor, Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives (“House Democratic Caucus Intervenor” or “Representative McClinton”), hereby files this Trial Brief setting forth the evidence the House Democratic Caucus Intervenor intends to present as well as the Intervenor’s position of two anticipated and significant legal issues expected to be encountered during the trial.¹

II. EVIDENCE TO BE PRESENTED

Pursuant to paragraph 3 of this Court’s January 14, 2022 Order, on January 24, 2022, Representative McClinton submitted a single proposed 17-district congressional redistricting plan (“House Democratic Caucus Plan”) that is consistent with the 2020 Census, together with her opening brief in support thereof. Representative McClinton

¹ Pursuant to Pa. R. App. P. 106, “this Court, when addressing a matter within its original jurisdiction, follows the practice and procedure set forth in the [Pennsylvania] rules of civil procedure.” *Nat’l Solid Wastes Mgmt. Ass’n v. Casey*, 600 A.2d 260, 262 (Pa. Commw. 1991) *aff’d without opinion* 619 A.2d 1063 (Pa. 1993) 591 A.2d 105 (Pa. 1991). *See also Pa. Human Rels. Comm’n v. Sch. Dist.*, 732 A.2d 578, 580 (Pa. 1999). Pa. R. Civ. P. 1038 provides generally that the “trial of an action by a judge sitting without a jury shall be conducted as nearly as may be as a trial by jury is conducted and the parties shall have like rights and privileges, including the right to move for nonsuit.” *See* Pa. R. Civ. P. 1038(a). Pa. R. Civ. P. 223 provides that subject to the requirements of due process of law and the constitutional rights of the parties, the Court may make and enforce rules and orders covering certain enumerated matters regulating the conduct of the trial. This Court issued numerous orders covering the conduct of this trial, nevertheless, none of those orders made provision for the filing of a trial brief. Pursuant to Pa. R. Civ. P. 223 or 212.2 many courts of common pleas provide for the filing or furnishing to the trial court of either a “Pre-Trial Statement” or “Trial Brief.” *See, e.g.*, Lackawanna Cty. Civ. LR 223.1. Accordingly, Trial Briefs are envisioned by the Pennsylvania Rules of Civil Procedure and the local rules of the courts of common pleas, and because none of this Court’s pre-trial orders forbade the filing of Trial Briefs, Intervenor files the instant trial brief.

also submitted all data upon which the McClinton Plan is based together with all other required data. Representative McClinton did not submit an expert report, as on its face, the House Democratic Caucus Plan together with all of the supporting data make clear that, in this case, the House Democratic Caucus Plan satisfies the requirements of equal population, compactness, contiguity and are not divided among subdivisions except to achieve equality of population, thereby eliminating the need for any expert testimony in support thereof in the present case, as the testimony of any expert on behalf of the House Democratic Caucus Plan would amount to nothing more than a regurgitation of the data and plan already properly before this Court.²

Accordingly, the House Democratic Caucus intends to present evidence in the form of its proposed 17-district congressional redistricting plan together with all of the supporting data and files required by this Court to be filed on January 24, 2022 and which was timely filed on that date. The House Democratic Caucus Intervenor does not intend to present any witness testimony, but does reserve the right to cross examine the witnesses presented by other parties.

² Furthermore, it goes without saying that any expert testimony on the core issue of whether the House Democratic Caucus Plan was “constitutional” under either the Pennsylvania or United States Constitutions would constitute impermissible expert testimony on solely legal issue.

III. ANTICIPATED LEGAL ISSUES AND INTERVENOR'S POSITION

The House Democratic Caucus Intervenor anticipates that two significant legal issues will arise at trial and as such, sets them forth herein together with a summary of its position on both issues. The two issues are: (1) whether this Court has the power or jurisdiction to issue an order determining the constitutionally appropriate redistricting plan were such a determination will require this Court to opine on the proper interpretation and application of our Commonwealth's Constitution, when such power and jurisdiction is specifically consigned to the Supreme Court of Pennsylvania. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 822 (Pa. 2018) (“Indeed, matters concerning the proper interpretation and application of our Commonwealth’s organic charter are at the end of the day for this Court — and only this Court.”); and (2) regardless of this Court’s determination of its own jurisdiction, power, or authority to craft and order the implementation of any remedy in this matter, whether a redistricting plan passed by the general assembly but vetoed by the Governor of the Commonwealth or any other proposed plan purporting to be submitted on behalf of a majority of the members of the General Assembly is deserving of any deference or presumption of constitutionality over that of any other proposed redistricting plan.

For the reasons set forth below, the House Democratic Caucus Intervenor respectfully suggests that this Court does not possess such remedial jurisdiction, and even if it did, it owes no deference or presumption of constitutionality to the plan passed by the Pennsylvania General Assembly and vetoed by the Governor of the

Commonwealth, nor any other plan purporting to have the support of the majority of the members of the General Assembly.

A. This Court Lacks The Subject Matter Jurisdiction and Power to Determine the Whether Any of the Proposed Redistricting Plans Are Constitutionally Sound

It cannot be gainsaid that this Court is a court of limited jurisdiction. This Court's jurisdiction is circumscribed by statute (42 Pa. C.S. §§ 761 – 764). Relevant to this matter, this Court's jurisdiction can only be predicated upon 42 Pa. C.S. §761(a)(1), as this Court has original (but not exclusive) subject matter jurisdiction over all civil actions and proceedings in against the Commonwealth government, including any officer thereof, acting in their official capacity. *Id.*³ Furthermore, 42 Pa. C.S. § 562 specifically cabins this Court's powers by limiting those powers to issuing:

every lawful writ and process necessary or suitable for the exercise of its jurisdiction and for the enforcement of any order which it may make, including such writs and process to or to be served or enforced by system and related personnel as the courts of common pleas are authorized by law or usage to issue. The court shall also have all powers of a court of record possessed by the courts of common pleas and all powers necessary or appropriate in aid of its appellate jurisdiction which are agreeable to the usages and principles of law.

Id. Simply put this Court's power is limited to performing all necessary acts and the issuance of all process necessary in order to exercise its jurisdiction as an appellate court

³ While 42 Pa. C.S. § 764 delegates to this Court exclusive original jurisdiction over certain contests related to nominations and elections pursuant to the Pennsylvania Election Code, this matter does not involve any contested election or nomination for any office in particular over which this Court has original exclusive jurisdiction.

or as a court of original jurisdiction, like that of a court of common pleas within one of Pennsylvania's 60 judicial districts. *Id.*

By contrast, the Supreme Court of Pennsylvania possesses original, appellate, extraordinary, special, and Plenary jurisdiction over all matters within Pennsylvania's Unified Judicial System. *See* Pa. Const. art. V, §§ 1, 2, 10. *See also* 42 Pa. C.S. §§ 721 – 727. No statute nor the Pennsylvania Constitution limits the judicial power of the Supreme Court of Pennsylvania. To the contrary, “The Supreme Court (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth;” Pa. Const. Art. V, § 2(a). *See also* 42 Pa. C.S. § 501 (“The [Supreme] court shall be the highest court of this Commonwealth and in it shall be reposed the supreme judicial power of the Commonwealth.”). Finally, the “general powers” of our Supreme Court are statutorily set forth as follows:

The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise the following powers:

- (1) All powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law.
- (2) The powers vested in it by statute, including the provisions of this title.

42 Pa. C. S. § 502. Accordingly, our Constitution and judiciary code make plain that, unlike every other court in this Commonwealth, the Supreme Court has all the necessary powers in aid of its original and appellate jurisdiction, and also all powers vested by statute including the “powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King’s Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722.” *Id.* As such, the Supreme Court of Pennsylvania, by definition has the power, authority, and jurisdiction to fashion any judicial remedy: legal, equitable, criminal, or otherwise. As is self-evident, the Supreme Court is the only court within this Commonwealth to be so invested. *Id.*

With regard to the sole issue before this Court in this proceeding, which of more than a half dozen of proposed congressional redistricting plans should be adopted by the Commonwealth as part of the United States Constitution’s mandated decennial redistricting process following the constitutionally required census, our Supreme Court has been called upon previously to fashion such a remedy *i.e.*, select between competing re-districting plans or simply fashioning one itself that meets both the federally mandated requirements and those of the Free and Equal Elections Clause of the Pennsylvania Constitution. Pa. Const. Art. I, § 5. *See League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (“*LWV*”); *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992). *See also Butcher v. Bloom*, 203 A.2d 556, 559 (Pa. 1964) (relating to “Pennsylvania

Reapportionment Acts and the election of state senators and representatives thereunder.”). The *LWV* Court in summarizing those prior decisions stated:

Thus, it is beyond peradventure that it is the legislature, in the first instance, that is primarily charged with the task of reapportionment. However, the Pennsylvania Constitution, statutory law, our Court’s decisions, federal precedent, and case law from our sister states, all serve as a bedrock foundation on which stands the authority of the state judiciary to formulate a valid redistricting plan when necessary. Our prior Order, and this Opinion, are entirely consistent with such authority.¹¹

Id. at 824. Furthermore, the *LWV* Court held:

When, however, the legislature is unable or chooses not to act, it becomes the judiciary’s role to determine the appropriate redistricting plan. Specifically, while statutes are cloaked with the presumption of constitutionality, **it is the duty of this Court**, as a co-equal branch of government, to declare, when appropriate, certain acts unconstitutional. **Indeed, matters concerning the proper interpretation and application of our Commonwealth’s organic charter are at the end of the day for this Court — and only this Court.**

Id. at 822 (emphasis added). Specifically with regard to the crafting of a remedy, the *LWV* Court found:

Further, our Court possesses broad authority to craft meaningful remedies when required. Pa. Const. art. V, §§ 1, 2, 10; 42 Pa.C.S. § 726 (granting power to “enter a final order or otherwise cause right and justice to be done”).

Id. (emphasis added).

Accordingly, what any fair reading of *LWV*, *Mellow*, and *Butcher* bring into sharp focus is that it is the Supreme Court that uniquely possess both the jurisdiction and power to “craft” the remedy at issue in this case. To be sure, this Court has the

jurisdiction and power to declare a statute unconstitutional when, as here, it is sitting in its original jurisdiction just as the 60 courts of common pleas possess the same jurisdiction and power to do so. *See* 42 Pa. C. S. §§ 912, 931. *See also* 42 Pa. C.S. § 722(7) (conferring upon the Supreme Court of Pennsylvania exclusive appellate jurisdiction from final orders of the courts of common pleas in cases where “the court of common pleas has held invalid as repugnant to the Constitution, treaties or laws of the United States, or to the Constitution of this Commonwealth, any treaty or law of the United States or any provision of the Constitution of, or of any statute of, this Commonwealth, or any provision of any home rule charter.”). What neither this Court nor the courts of common pleas have the jurisdiction or power to do is to craft a constitutional remedy in the form of either creating or selecting a redistricting plan. *See LWW* at 822.

The logic for underpinning such a rule is sensible. This Court should not be required to at once rule on the constitutionality of many different redistricting plans where they all may very well pass constitutional muster, while also then selecting one of those plans as the “winner.” This Court possesses neither the power nor the jurisdiction to make such a section.

This fact that this Court lacks the jurisdiction, power, and authority to implement one constitutionally satisfactory plan over another is further buttressed by *LWW*, *Mellow*, and *Butcher*. In each of those cases, once the legislature and governor failed to enact reapportionment or redistricting plans it was the Supreme Court that fashioned

the remedy. Specifically, in both *LWV* and *Mellow* relating to congressional redistricting plans, the Supreme Court fashioned the remedy while at the same time deputizing this Court to conduct “all necessary and appropriate discovery, pre-trial and trial proceedings so as to create an evidentiary record on which Petitioners’ claims may be decided.” *LWV* at 766-67. *See also Mellow* at 206 (designating “President Judge David W. Craig of the Commonwealth Court as Master to conduct hearings and report to us not later than February 26, 1992.”). Regardless of the designation bestowed upon this Court by the Supreme Court, in both instances, this Court’s final determination was transmitted to the Supreme Court not as a final order and judgment of this Court, to the contrary, on both occasions this Court transmitted findings of fact, conclusions of law and recommendations as to the remedy. *See LWV* at 838 n.1 (referring to this Court’s “December 29, 2017 Recommended Findings of Fact and Conclusions of Law”); and *Mellow* at 206 (referring to President Judge Craig’s submission of “‘Findings, Recommended Decision and Form Order,’ along with a proposed election schedule revision”).

Unlike the present case, in *LWV*, the preliminary issue was whether the then existing and enacted “Pennsylvania Congressional Redistricting Act of 2011” violated our Commonwealth’s Constitution. *Id.* at 741. Here, there is currently no required

redistricting plan in place.⁴ Accordingly, no decision need be rendered on the constitutionality of any existing redistricting map. Furthermore, the parties have stipulated that based upon the United States 2020 Census results, Pennsylvania shall be apportioned 17 seats in the United States House of Representatives as opposed to the 18 seats apportioned by to the Commonwealth as a result of the 2010 United States Census. *See* Joint Stipulation of Facts at ¶¶ 1, 3. As a result, the current Pennsylvania congressional map enacted by the Pennsylvania Supreme Court in 2018 as a result of the *LWV* decision, is by definition unconstitutional as it contains one more district than the Commonwealth has been apportioned. *See* USCS Const. Art. I, § 2, Cl 3.

Because Pennsylvania’s current congressional district map provides for 18 congressional districts rather than 17 it cannot be used for the upcoming election. As a result, this Court need not pass judgment upon the constitutionality of that map, nor is there a currently enacted redistricting plan the constitutionality over which this Court is being asked to determine. *See* Exhibit “A.” Accordingly, this Court is only being asked to fashion a remedy in the absence of a legislatively passed and approved redistricting plan. As discussed above, the jurisdiction, power, and authority to issue such a remedy is outside the statutorily prescribed jurisdiction and power of this Court and instead resides solely with the Supreme Court of Pennsylvania.

⁴ While the legislature sent House Bill 2146, Printer’s Number 2541 (“Congressional Redistricting Act of 2021”) to Governor Wolf for approval, today at approximately 2:40 p.m., Governor Wolf returned that bill without his approval thereby vetoing the legislature’s proposed redistricting plan. *See* January 26, 2021 Veto statement of Governor Tom Wolf, a copy of which is attached hereto, made a part hereof and marked Exhibit “A.”

Given this matter's current procedural posture, it is more closely procedurally aligned with *Mellow*. Nevertheless, in *Mellow*, President Judge Craig did not order a remedy in the form of a redistricting plan. Instead, President Judge Craig conclude the following:

The resulting recommendation, considering all of the elements reviewed above, is to advise in favor of approval of Plaintiffs' Plan 2 as (1) having a low maximum deviation, (2) consistent with minimal splitting of precincts, (3) achieving an enlarged number of two congressional districts with a majority African-American population and (4) coming closest to implementing the community-of-interest factors in those regions across the state which have identified them.

Id. at 224 (Appendix "A" to the decision of the Supreme Court). President Judge Craig then went on to provide "recommendations" to the Supreme Court of Pennsylvania relating to revisions of the election calendar based upon a memorandum submitted by the Secretary of the Commonwealth and the Election Commissioner relating to both the litigation regarding the congressional redistricting plan that was at issue in *Mellow* as well as "from the separate case involving appeals to the Supreme Court from the Reapportionment Commission." *Id.*

Simply stated, this Court is lacks jurisdiction and is statutorily precluded from issuing a final judgment and order declaring which (if any) of the submitted congressional redistricting plans should be utilized in the upcoming 2022 congressional election cycle. Furthermore, the most recent cases from the Pennsylvania Supreme Court and this Court directly addressing this issue reveal that on the last two prior

occasions this Court was called on to review congressional redistricting plans, it did not enter an order declaring which plan would be adopted. Instead, it heard evidence, submitted findings of fact and conclusions of law and then issued its overall conclusions not as an order and final judgment, but instead as a “Recommended Decision.” *See Mellow* at 206, 224; *LWV* at 838, n.36 (referring to this Court’s December 29, 2017 decision as “Recommended Findings of Fact and Conclusions of Law”).

Accordingly, Intervenor Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives, respectfully submits that any remedy adopted by this Court be adopted in the form of a “recommendation” as opposed to a final order and judgment of this Court, since this Court lacks the jurisdiction, power and authority to order such a remedy.

B. No Suggested Redistricting Plan Is Deserving of Deference or Special Consideration From This Court

As this Court is well aware this trial was necessitated solely by the inability of the Pennsylvania General Assembly to pass a congressional redistricting act to which Governor Wolf was amenable to signing. *See* Exhibit “A.” Accordingly, any argument or suggestion by any party or *amici* that the redistricting plan as set forth in the now vetoed Congressional Redistricting Act of 2021 should be given deference by this Court or somehow considered specially by this Court would constitute not merely an error of law, but a constitutionally erroneous conclusion by this Court.

In *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 862, (U.S. 2015), the United States Supreme Court held not only that different states may regulate their state and national elections differently (*Id.* at 862, n.25), but also that the use of the phrase “the Legislature thereof” in Elections Clause of the United States Constitution, U.S. Const. art. I, § 4, cl. 1, means the lawmaking process of a particular state. *Id.* at 816 (“But it is characteristic of our federal system that States retain autonomy to establish their own governmental processes.”). *See also Corman v. Torres*, 287 F. Supp. 3d 558, 573 (M.D. Pa. 2018). In Pennsylvania, even after a bill passes both houses of the General Assembly, it must still be presented to and approved by the Governor before it is enacted. *See Pa. Const. Art. IV, § 15*. If the Governor refuses to approve the bill or vetoes it, he must then send it back to the General Assembly. In turn each house of the General Assembly may reconsider the bill and if each house separately approves the previously vetoed law by a margin of two-thirds of all of the members elected to each house independently, then the bill can be enacted into law. *Id.*

Accordingly, since the Elections Clause of the United States Constitution means the normal lawmaking processes of a state, and Pennsylvania’s normal lawmaking process requires approval of the Governor or reconsideration of vetoed bill followed by passage of that bill by each house by a two-thirds margin in each house separately and independently, the submission of a redistricting plan to this Court that was vetoed by the Governor, and is not enacted into law by virtue of the General Assembly overriding the Governor’s veto, holds no special place and should not be given any

additional consideration or deference by this Court. Similarly, any proposed redistricting plan submitted by a group of legislators allegedly constituting a majority of the General Assembly is likewise not deserving of any special treatment or deference from this Court. Instead, all of the redistricting plans should be considered equally and whichever plan or plans this Court chooses to recommend to the Supreme Court should be based upon the guidance and principles set forth in *LWV* and *Mellow* supplemented by the facts and evidence submitted to the Court and admitted into evidence on the record of this matter.

IV. CONCLUSION

For all the foregoing reasons, Intervenor Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives, respectfully requests that this Honorable Court issue its remedy in the form of a recommendation to the Supreme Court of Pennsylvania and that in considering the various proposed redistricting plans, that this Court not give deference to nor any special consideration of any plan which has previously been passed by a simple majority of the General Assembly, vetoed by the Governor and otherwise not enacted into law. Similarly, Intervenor respectfully requests that this Honorable Court not give any difference to nor special treatment of any proposed redistricting plan submitted by an allegedly “majority” of the members of the General Assembly.

Respectfully submitted,



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Representatives

Dated: January 27, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief contains 3884 words. In making this certification, I have relied upon the word count function of the word-processing system used to prepare this Brief.

I further certify that this Brief 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.

Respectfully submitted,



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Exhibit “A”



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

RECEIVED

2022 JAN 26 PM 2:40

DEPT OF STATE
BUREAU OF CE

THE GOVERNOR

January 26, 2022

TO THE HONORABLE HOUSE OF REPRESENTATIVES OF THE
COMMONWEALTH OF PENNSYLVANIA

Pursuant to Article IV, Section 15 of the Pennsylvania Constitution, I am returning herewith, without my approval, House Bill 2146, Printer's Number 2541.

This legislation fails the test of fundamental fairness. The result of a partisan political process, HB 2146 does not deliver on the Pennsylvania Constitution's guarantee of free and equal elections. The people of Pennsylvania deserve a fair election map that promotes accountability and responsiveness to voters and is drawn in an open and honest way. Instead, HB 2146 adopts a map selected by politicians to take advantage of the process and choose their own voters. This directly contravenes a "core principle of our republican form of government" identified by the Pennsylvania Supreme Court: "that the voters should choose their representatives, not the other way around." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 740-41 (Pa. 2018).

Last year, I convened a Pennsylvania Redistricting Advisory Council made up of six members with expertise in redistricting, political science, and mapmaking, to establish a set of Redistricting Principles to help guide my review of maps considered and ultimately passed by the General Assembly. The Redistricting Advisory Council met numerous times, and subsequently held a series of in-person and virtual public listening sessions across the state to take public feedback on the Redistricting Principles and the redistricting process. The Redistricting Principles were finalized and made public in late November and consist of (1) Legal Principles, *i.e.*, directives for compliance with legal requirements, such as ensuring that population deviations between districts comply with the United States and Pennsylvania Constitutions; as well as (2) Principles of Representation, *i.e.*, guidance to ensure that communities of interest are maintained, that representation is fair, and that the public can participate meaningfully in the process. This bill fails to comply with the Redistricting Principles outlined by the Redistricting Advisory Council.

First, the revised map splits multiple communities of interest, including splits in Luzerne, Dauphin, Philadelphia and Chester counties that do not appear to be motivated by compelling legal principles, but rather by a desire to make districts more favorable to Republican candidates. Second, the Redistricting Advisory Council recommended that I review proposed maps to determine whether their expected performance is consistent with statewide voter preference. The HB 2146 map falls short on this basic measure of partisan fairness, giving a structural advantage to Republican candidates that far exceeds the party's voter support. A comparison of the HB 2146 map to prior election results and to neutrally drawn maps, using rigorous mathematical methodology, has demonstrated that the HB 2146 map would unnecessarily create noncompetitive districts unresponsive to Pennsylvania political trends and prevailing voter preference. Third, the HB 2146 map does not adequately satisfy the traditional redistricting criteria identified by the Pennsylvania Supreme Court in *League of Women Voters*. Last, despite promises of an open and transparent process, Democratic members of the General Assembly were completely cut out of the process of selecting the map from start to finish. As recently as January 18, 2022, as HB 2146 moved out of committee, the Pennsylvania Senate Republican Caucus issued a press release alerting the public that

"[a]dditional amendments are expected," in an effort to reach bipartisan compromise. Ultimately, these repeated promises of bipartisanship were only kept to the extent that several Republican members of the House of Representatives crossed the aisle to vote against this unfair map.

After this bill was introduced, I made my strong objections to the congressional redistricting map clear and urged bipartisan cooperation. I even provided the General Assembly with two congressional redistricting map options as examples of the type of map I would support – free of gerrymandering, consistent with the principles of the Redistricting Advisory Council, and in full accord with the Voting Rights Act and United States and Pennsylvania Supreme Court precedent – and to show that there are multiple ways to draw a fair map that meets the Redistricting Principles. Instead, the HB 2146 map was the only map considered by the General Assembly despite all the time they had to introduce maps for public comment and debate. The public deserves a fair map completed in a bipartisan manner; the General Assembly failed to adopt one.

For the reasons set forth above, I must withhold my signature from House Bill 2146, Printer's Number 2541.

Sincerely,



TOM WOLF
Governor

RECEIVED
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DEPT OF STATE
DIVISION OF CHIEF OF STAFF