

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nos. 464 MD 2021 & 465 MD 2021 (CONSOLIDATED)

CAROL ANN CARTER, ET AL.,

Petitioners,

V.

VERONICA DEGRAFFENREID, ET AL.,

Respondents.

PHILIP T. GRESSMAN, ET AL.,

Petitioners,

V.

VERONICA DEGRAFFENREID, ET AL.,

Respondents.

**BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO
INTERVENE BY GUY RESCHENTHALER, JEFFREY VARNER,
TOM MARINO, RYAN COSTELLO, AND BUD SHUSTER**

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TABLE OF CONTENTS

I.	BACKGROUND	1
II.	ARGUMENT	9
	A. Because each of the Proposed Intervenors could have joined the Carter and Gressman Petitioners in commencing this action, they satisfy the criteria for intervention.	10
	B. Intervention should be granted because the Court’s determination in this matter will affect the Proposed Intervenors’ legally enforceable interests.	11
	1. As a current member and candidate for the United States House of Representatives, Congressman Reschenthaler has a legally enforceable interest that could be affected by the outcome of this action.	11
	2. Intervenor Varner could have been joined as an original party to this matter and the Court’s determination in this matter will affect his legally enforceable interests.	15
	3. The Former Congressmen could have been joined as original parties to this matter and the Court’s determination in this matter will affect their legally enforceable interests.	19
	C. The Carter Petitioners’ singular argument in rejoinder to the Proposed Intervenors’ interest is misplaced.	20
	D. There is no basis for denying intervention under Rule 2329.	21
III.	CONCLUSION	27

I. BACKGROUND

Following the 2020 census, the Pennsylvania General Assembly began the process of redrawing congressional districts in the Commonwealth to reflect apportionment for 17 congressional seats. The General Assembly did not pass legislation adopting a congressional redistricting plan prior to adjourning for the calendar year.

Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roeseanne 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 (“Carter Petitioners”) submitted a Petition for Review to this Court on December 17, 2021, docketed at 464 MD 2021 (the “Carter PFR”).

Also on December 17, 2021, Petitioners 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. Freeman, and Garth Isaak (“Gressman Petitioners”) filed a Petition for Review in this Court, docketed at 465 MD 2021 (the “Gressman PFR”).

Together, the Carter and Gressman Petitioners (jointly, the “Petitioners”) seek to enjoin Respondents Veronica Degraffenreid, the Acting Secretary of the Commonwealth of Pennsylvania, and Jessica Matthis, the Director of the Pennsylvania Bureau of Election Services and Notaries, from enforcing or implementing the current congressional district plan and ask this Court to adopt a new congressional district plan that complies with relevant state and federal requirements.

As relevant herein, in support of their request for expedited judicial action, the Carter Petitioners insist that further delay in adopting a redistricting plan risks causing substantial harm to the interests of “[v]oters, candidates, and Pennsylvania’s election administration apparatus” Carter PFR, at ¶ 44; *see also id.* at ¶ 45 (noting the impending deadline for submitting nominating petitions and papers); *id.* at ¶ 46 (“Potential congressional candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing their district boundaries.”).

Similar to the Carter Petitioners, the Gressman Petitioners also seek “the implementation of a new congressional district map with the correct number of congressional districts that adheres to the one-

person, one vote standard and all other applicable constitutional and legal requirements[,]” Gressman PFR at ¶ 1, and allege that the absence of a congressional districting plan has caused—and will continue to cause—substantial harm to voters and candidates. *See id.* at ¶ 44-45.

To that end, the Gressman Petitioners, who describe themselves as “registered voters and leading mathematicians and scientists in the Commonwealth of Pennsylvania[,]” *id.* at 1, intend to “advocate for a rigorous, data-driven, and scientifically based means of redistricting their malapportioned districts.”

On December 20, this Court entered a *per curiam* Order consolidating the Carter and Gressman Petitioners’ actions, instructed any parties seeking to intervene in this matter to submit their requests by December 31, 2021, directed the parties to submit their proposed redistricting plan by January 28, 2022, and relayed that if the General Assembly is unable to enact redistricting legislation by January 30, 2022, a hearing would be held on January 31, 2021 to commence the process for selecting one of the redistricting schemes proposed by the

parties and, if necessary, “consider revisions to the 2022 election schedule/calendar as part of the hearing.” 12/20/2021 Order at 4.

The following day, the Carter and Gressman Petitioners also submitted separate Applications for Extraordinary Relief to the Supreme Court requesting that the Court assume original jurisdiction over the matter.

On December 27, 2021, Respondent Veronica Degraffenreid, Acting Secretary of the Department of State (the “Department”), filed an answer to the aforementioned application agreeing with the Carter and Gressman Petitioners that extraordinary relief was appropriate because, among other things, “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.” Respondents’ Answer to Petitioners’ Application for Extraordinary Relief at 3.

United States Representative Guy Reschenthaler (“Congressman Reschenthaler”), Swatara Township Commissioner Jeffrey Varner

(“Commissioner Varner”), and Former Congressmen Tom Marino, Ryan Costello, and Bud Shuster (the “Former Congressmen”) (collectively “Proposed Intervenors”) now seek leave to intervene. Proposed Intervenors are not named as either a petitioner or a respondent in the Petitions for Review. And as developed *infra*, Proposed Intervenors’ interest in these consolidated cases is acute—more so than those of the existing parties—such that Proposed Intervenors have a direct, immediate, and substantial interest in the outcome of this case.

Congressman Reschenthaler is the representative in Pennsylvania’s current 14th Congressional District. Because Pennsylvania’s current congressional plan is unconstitutional, Congressman Reschenthaler’s district will be impacted during the redistricting process. Congressman Reschenthaler’s interest is far greater than any Petitioner in the case because, as a sitting member of the United States House of Representatives who is participating in the 2022 midterm elections, he has an acute need to know the boundaries of his district before he begins circulating nominating petitions on February 15, 2022. *See* 25 P.S. § 2868. In fact, the Carter Petitioners also highlight how having a constitutional congressional plan in place is

especially important for congressional candidates who need to “collect signatures” and “make strategic decisions[.]” Carter PFR, at ¶ 46.

Commissioner Varner is a registered voter and resident of Swatara Township, Dauphin County, located in the current 10th Congressional District. *See* Carter PFR, at ¶ 28. Accordingly, like the Carter Petitioners—and more specifically Petitioners Mary Ellen Balchunis and Tom DeWall—Varner has an interest in residing in and voting in a congressional district that gives equal weight to his vote.

Commissioner Varner is also a duly elected member of Swatara Township Board of Commissioners, and has served as a Township Commissioner since 2012 in that capacity. Acting through its Board of Commissioners, Swatara Township, like many municipalities throughout the Commonwealth, often engages with its member of Congress in various initiatives, including obtaining funding from the Federal government for essential services it provides to constituents.

In addition, Commissioner Varner has substantial experience and understanding of the redistricting process, having participated in efforts to implement a new districting scheme in Swatara Township following the 2010 decennial census. As a local elected official with first-

hand knowledge of the community and the multitude of considerations that inform efforts to redraw districts following a decennial census, Varner understands that the process cannot be reduced to a mathematic or scientific formula and, instead, intends to advocate for a process that accounts for the unique needs and configuration of each locale.

Further, based on his experience as local elected official, Varner intends to propose certain modest amendments to this Court's December 20, 2022 plan, which would allow for increased transparency and broader public input, while ensuring that the process remains orderly and all necessary deadlines are met.

Proposed Intervenor Tom Marino is a former United States Representative who represented Pennsylvania's 10th Congressional district from 2011-2019, and Pennsylvania's 12th Congressional district in 2019.¹

¹ Carter Petitioners distinguish between those districts that are underrepresented and overrepresented as a result of the 2020 census data. In particular, the Carter Petitioners appear to emphasize that individuals who reside in, or represent the citizenry of, those districts—like the 12th Congressional District—that are overrepresented are somehow not aggrieved by Pennsylvania's malapportioned maps because their votes are more potent than those voters who reside in underrepresented districts. *See* Carter Petitioners' Memorandum in Opposition to the Application to Intervene by the Proposed Intervenors ("Carter

Proposed Intervenor Ryan Costello is a former United States Representative who represented Pennsylvania's 6th Congressional district from 2015-2019.

Proposed Intervenor Bud Shuster is a former United States Representative who represented Pennsylvania's 9th Congressional district from 1973-2001.

Collectively, the Former Congressmen have a deep understanding of the redistricting process, having participated in this process before. The Former Congressmen have first-hand knowledge of the community and the multitude of considerations that inform efforts to redraw districts following a decennial census, and each understands that the process cannot be reduced to a mathematic or scientific formula and, instead, intends to advocate for a process that accounts for the unique needs and configuration of each locale.

Answer”) at 8. But the Pennsylvania Constitution's guarantee of a free and equal election draws no such distinction. *See* Pa. Const. art. I, § 5. It is in the interest of the Proposed Intervenor, as members of a malapportioned district, to have an equal vote in the electoral process. *See Patterson v. Barlow*, 60 Pa. 54, 75 (1869) (“How shall elections be made equal? Clearly 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 in filling the offices of the Commonwealth.”).

II. ARGUMENT

Intervention should be granted because the Proposed Intervenors have satisfied the requirements of Rule 2327 and none of the exceptions in Rule 2329 apply. As this Court has explained, “[c]onsidering Rules 2327 and 2329 together, the 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 Township Zoning Hearing Board*, 740 A.2d 308, 313 (Pa. Cmwlth. 1999). As explained below, Proposed Intervenors have a right to intervene because they could have been joined as original parties to these consolidated cases and the determination of this matter will affect their legally enforceable interests. Further, there is no reason for denying intervention, as the Proposed Intervenors’ claims are in subordination to the action, their interests differ from the existing parties, and their timely intervention will not delay or prejudice the adjudication of the Petitions for Review.

A. Because each of the Proposed Intervenors could have joined the Carter and Gressman Petitioners in commencing this action, they satisfy the criteria for intervention.

Most fundamentally, setting aside their particularized and heightened interest in this action, the fact that Proposed Intervenors are registered voters in their respective congressional districts—without more—is sufficient to establish their right to intervene under Rule 2327 for at least two reasons.

First, as registered voters who are entitled to seek the same general relief as the Carter and Gressman Petitioners—namely the timely implementation of a constitutionally compliant redistricting plan—Congressman Reschenthaler, Commissioner Varner, and the Former Congressmen could have joined as original parties in both or either of these consolidated actions and the determination of this action may affect their legally enforceable interest. *See* Pa.R.Civ.P. 2327(3) (providing that “[a]t 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,” *inter alia* “such person could have joined as an original party in the action or could have been joined therein”).

Second, insofar as the Carter and Gressman Petitioners request that this Court adopt a congressional redistricting plan, “the determination of [this] action” will affect the Proposed Intervenors’ “legally enforceable interest” in preventing a dilution of the their votes, which would result from the use of the existing congressional redistricting plan in the 2022 primary. This is the precise interest asserted by the Carter and Gressman Petitioners. *See* Pa.R.Civ.P. 2327(4).

B. Intervention should be granted because the Court’s determination in this matter will affect the Proposed Intervenors’ legally enforceable interests.

- 1. As a current member and candidate for the United States House of Representatives, Congressman Reschenthaler has a legally enforceable interest that could be affected by the outcome of this action.**

In addition to his interest as a registered voter, Congressman Reschenthaler is entitled to intervene because he has a legally enforceable interest in this action. Specifically, because this action involves a challenge to the congressional redistricting plan in its entirety, any congressional redistricting plan will directly impact the boundaries of the district for which he seeks election in 2022. Moreover,

that interest is particularly acute, given that Congressman Reschenthaler is set to begin circulating nominating petitions in a little over a month, and in order to do so effectively, he must understand the boundaries of his district. Indeed, the Carter Petitioners acknowledge that congressional candidates have a constitutional redistricting plan in place for the start of the 2022 election cycle. *See* Carter PFR, at ¶¶ 45-46.

In short, a delayed map, or worse yet, an unconstitutionally malapportioned map will adversely affect Congressman Reschenthaler's plans for re-election in the 2022 election cycle. *See William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975) (holding, in the context of the heightened requirements necessary to establish standing, that a substantial interest is "some discernable adverse effect to some interest other than the abstract interest of all citizens in having other comply with the law").

Moreover, inasmuch as this Court's December 20, 2021 Order provides a framework that is "consistent with the process established in *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992)," Order at 1 (Dec. 20, 2021), Congressman Reschenthaler is entitled to intervene. Specifically, in

Mellow, which Respondents reference as the “blueprint” for judicial resolution of a legislative impasse in the redistricting process,² “[t]wo members of Pennsylvania’s congressional delegation, Congressmen Joseph M. McDade and John P. Murtha, intervened and timely presented a plan[.]” *Mellow*, 607 A.2d at 212; see also *League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 (Pa. 2018) (noting that, in a challenge to a redistricting plan, this Court “permitted to intervene” among others, “announced or potential candidates for Congress”). In keeping with that blueprint—which proved remarkably effective—Congressman Reschenthaler should be permitted to intervene.

Finally, nearly every court that has been presented with a challenge to congressional redistricting plan has granted intervention to members of Congress (or candidates) whose district would be affected by the requested relief. See, e.g., *League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018), (holding that the District Court erred in denying intervention to members of Congress, given that “the contours of the maps affect the Congressmen directly and

² See Respondents’ Response to Intervenors’ Opposition to Petitioners’ Application for Exercise of Extraordinary Relief or King’s Bench Power at 4.

substantially by determining which constituents the Congressmen must court for votes and represent in the legislature”), *rev’g.*, 373 F. Supp. 3d 867 (E.D. Mich.); *Johnson v. Mortham*, 915 F. Supp. 1529, 1538 (N.D. Fla. 1995) (“Congresswoman Brown, whose congressional district is being challenged in the case at bar, is entitled to intervene as of right.”); *In re Pennsylvania Cong. Districts in Reapportionment Cases*, 535 F. Supp. 191, 192 (M.D. Pa. 1982) (special three-judge panel) (*per curiam*) (members of Pennsylvania’s congressional delegation granted intervention); *Daggett v. Kimmelman*, 535 F. Supp. 978, 980 (D.N.J. 1982) (“We have permitted the incumbent Democratic members of Congress and other concerned persons to intervene as defendants.”); *Hunter v. Bostelmann*, No. 21-CV-512, 2021 WL 4206654, at *2 (W.D. Wis. Sept. 16, 2021) (allowing intervention by members of congress in an action pertaining to decennial redistricting, noting that “other courts have concluded that incumbents and prospective candidates have a substantial interest in the redistricting process”). Indeed, the Wisconsin Supreme Court, presented with a request nearly identical to the one submitted by the Carter Petitioners mere months ago, permitted individual congresspersons to intervene. *See Johnson v. Wisconsin*

Elections Comm., ___N.W.2d___, 2021 WL 5578395 (Wis. Nov. 30, 2021) (listing several Congresspersons as intervenors).

Notably, at least one court has held that individuals who have declared their candidacy in a district that is the subject of a re-districting challenge—albeit under the Voting Rights Act—are not only *permitted* to intervene, but are, in fact, ***indispensable*** parties. *See, e.g., Williams v. State Bd. of Elections*, 696 F. Supp. 1563, 1570 (N.D. Ill. 1988); *accord League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 884 F.2d 185, 188 (5th Cir. 1989) (agreeing that candidates for office have an “equitable interests in the remedy fashioned by the court” in a redistricting challenge).

2. Intervenor Varner could have been joined as an original party to this matter and the Court’s determination in this matter will affect his legally enforceable interests.

Turning to Varner, not only could he have joined as an original party—since he is on equal footing as at least two of the Carter Petitioners and one of the Gressman Petitioners—but also he has a legally protected interest in the process that stems from his role as a Township Commissioner. In particular, Commissioner Varner must engage with members of Congress in various initiatives, including

obtaining funding from the Federal government for essential services it provides to his constituents. An untimely, or worse yet, unconstitutional, redistricting plan will directly, and materially restrict Intervenor Varner's ability to identify which member of Congress he needs to work with to help provide essential services for his constituents.

Moreover, Intervenor Varner has a substantial, direct, and immediate interest in any splits that may occur to Swatara Township, as well as any municipalities with which it is grouped. Here, once again, the blueprint set forth in *Mellow* is instructive. The *Mellow* Court liberally allowed multiple municipal and county intervenors. *See* 607 A.2d at 220-221 (listing the “[v]arious intervenors” that “raised community-of-interest issues with respect to” their particular regions—including, Cheltenham Township; Leigh, North Hampton, Berks, Schuylkill, and Cumberland Counties); *see also In re Pennsylvania Cong. Districts in Reapportionment Cases*, 535 F. Supp. at 192 (“Plaintiffs are incumbent members of Congress, prospective candidates, ***municipal officials***, concerned citizens, and others.” (emphasis added)).

Indeed, the plan ultimately adopted in *Mellow* was predicated, in no small part, on robust evidence of local concerns presented to the Court. *See Mellow*, 607 A.2d at 220-24. By liberally allowing municipality and county intervenors, the *Mellow* Court indicated that it understood the importance of these particular, and local interests; especially where the Court was tasked with selecting a redistricting plan because of a legislative impasse. When the *Mellow* Court reached its conclusion, and selected a congressional redistricting plan, the Court stated that the map it chose came “closest to implementing the community-of-interest factors *in those regions across the state which have identified them.*” *Id.* at 224 (emphasis added). Had the municipal and county intervenors not identified their specific, and unique community interests, the *Mellow* Court’s attention may not have been focused on those interests.

The Supreme Court’s most recent decision concerning congressional redistricting further confirms that Commissioner Varner must be permitted to intervene. Specifically, in *League of Women Voters*, the Court viewed the following “foundational requirements” to be “a particularly suitable measure in assessing whether a

congressional districting plan dilutes the potency of an individual’s ability to select the congressional representative of his or her choice”:
“(1) the population of such districts must be equal, to the extent possible; (2) the district that is created must be comprised of compact and contiguous geographical territory; and (3) the district respects the boundaries of existing political subdivisions contained therein, such that the district divides as few of those subdivisions as possible.” *League of Women Voters*, 178 A.3d at 815 (citing, Pa. Const. art. I, § 16).³ Along these same lines, the *League of Women Voters*’ Court observed “rather than impermissibly lessening the power of an individual’s vote based on geographical area in which the individual resides . . . the use of compactness, contiguity, and the maintenance of the integrity of the

³ The Carter Petitioners minimize the importance of these interests as they relate to specific communities because, as they view it, these requirements are “already constitutional requirements . . . that this Court will surely consider when adopting a new plan.” Carter Answer at 9; *see also id.* at 11 (“It cannot be that voters from all 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 [*sic*] case that must be adjudicated expeditiously.”). Although this Court is already constitutionally required (when possible) to keep compact and contiguous the geographic boundaries of localities, this Court should follow the *Mellow* Court’s framework and allow various municipal and county intervenors. Not every county or municipality will seek intervention, but those that do clearly have unique community interests that they wish to bring to the Court’s attention. Indeed, the Commonwealth is not homogenous; the diverse needs of certain localities may warrant additional consideration.

boundaries of political subdivisions maintains the strength of an individual's vote in electing a congressional representative." *Id.* at 816. In short, consistent with *Mellow*, this Court should allow Commissioner Varner to intervene.

Here, Proposed Intervenor Varner, and the residents of Swarata, will be substantially, directly, and immediately impacted by the resolution of this case. *See Keener v. Zoning Hearing Bd. of Millcreek Tp.*, 714 A.2d 1120, 1122 (Pa. Cmwlth. 1998) (intervenor "must have some right, whether legal or equitable which will be affected by the proceedings").

3. The Former Congressmen could have been joined as original parties to this matter and the Court's determination in this matter will affect their legally enforceable interests.

Finally, not only could the Former Congressmen have filed suit challenging the unconstitutionally malapportioned districts as citizens and electors—thereby satisfying the requirement for intervention under Pa.R.C.P. 2327(3)—but also they have certain legally enforceable interests not asserted by any of the Petitioners. Specifically, Former Congressmen have an interest in advocating on behalf of the communities that they formerly served. Specifically, the Former

Congressmen stand apart from Petitioners because they have intimate knowledge of the redistricting process, and understand the geographical and communal interests attendant to that process. And because their knowledge is particularly acute with respect to the districts they previously served, they will be able to provide the Court with critical information regarding the communities and boundaries in their districts.

C. The Carter Petitioners' singular argument in rejoinder to the Proposed Intervenors' interest is misplaced.

Against this overwhelming authority demonstrating that Proposed Intervenors are entitled to intervene, the Carter Petitioners argue that the Application should be denied based on the Supreme Court's decision in *Albert v. 2001 Legislative Reapportionment Commission*, 790 A.2d 989 (Pa. 2002), which involved a challenge to a state legislative plan approved by the Legislative Reapportionment Commission. *Albert*, however, is entirely inapposite. To begin, the right to intervene in a redistricting challenge was not even at issue in *Albert*. Rather, the passages cited by the Carter Petitioners dealt with ***standing*** to bring an action. As this Court recently cautioned, while

principles of standing may have some relevance in determining the right to intervene, “[s]imply, the test for standing to initiate litigation is not co-terminus with the test for intervention in existing litigation.” *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep't of Hum. Servs.*, 225 A.3d 902, 910-11 (Pa. Cmwlth. 2020). Moreover, contrary to the Carter Petitioners’ suggestion, the *Albert* Court did not hold that a party is deprived of standing merely because its interest may also involve advancing a broader interest. Rather, that decision stands for the unremarkable proposition that *entities* lack standing—in their own right—to challenge a reapportionment plan on behalf of their members. Here, the Proposed Intervenors are not entities and, to the extent some may be associated with an entity (such as Congressman Reschenthaler and Commissioner Varner), they do not purport to bring this action on its behalf.

D. There is no basis for denying intervention under Rule 2329.

If a party seeking to intervene is “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. Cmwlth. 1999). As the above discussion amply demonstrates, Intervenor are within two of the classes described in Rule 2327 because they could have been joined as parties and their legally enforceable interests are affected by a determination in this case. Accordingly, allowance of intervention is required, unless one of the grounds for refusal in Rule 2329 can be shown. Turning to those grounds, under Rule 2329 may be denied only 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
- (3) the petitioner has unduly delayed in making application for

Because, as discussed below, none of these reasons for denying intervention are presently implicated, intervention must be granted.

First, Intervenor’s proposed claims are in subordination to and in recognition of the propriety of the pending action, as they recognize the need for adopting a congressional redistricting plan. *See* Pa.R.Civ.P. 2329(1).

Second, while they seek the same general relief as the Carter Petitioners, Proposed Intervenor’s interests differ from—and, therefore, are not already adequately represented by—the existing parties.

Specifically, the Carter registered Pennsylvania voters in overpopulated congressional districts seek to protect their right to cast an equal vote. While Proposed Intervenor's recognize and share the Carter Petitioners' goal of ensuring that each of the congressional districts comply with the one-person-one vote requirement, as set forth more fully above, Proposed Intervenor's have additional interests relative to a new congressional districting plan that are not adequately represented by any of the Petitioners.

The lack of adequate representation is particularly pronounced with regard to Congressman Reschenthaler. Courts have routinely recognized that members of congress seeking to intervene under these circumstances have "a personal interest in [] office that goes beyond the more general interest." *Johnson*, 915 F. Supp. at 1538; *see also Tarrant County v. Ashmore*, 635 S.W.2d 417, 422 (Tex. 1982) ("[A]n officer's interest in his elected position, though not 'property' in the conventional sense, is a recognizable interest for purposes of procedural due process analysis." (citing *Walton v. Davis*, 2 S.E.2d 603, 604 (Ga. 1939); *State ex rel. Ryan v. Norby*, 165 P.2d 302, 304 (Mont. 1946))).

Similarly, with the exception of their stated interest in ensuring that each of the congressional districts are equally populated, none of the existing parties have expressed any indication that they intend to advance or protect any interests that are specific to a particular region or locale. Indeed, none of the Carter Petitioners share the same county—let alone current Congressional District—as Congressman Reschenthaler, or Former Congressmen Marino and Schuster. Nor do any of the parties suggest that they have an interest in the treatment of Swatara Township in the next congressional map.⁴

Finally, Proposed Intervenors’ interests differ substantially from those of Respondents, which arises from their duties in administering elections. *See* 25 P.S. § 3159 (setting forth the Secretary’s duties in certifying election results). Respondents’ interests in the enactment of a

⁴ Furthermore, although not dispositive, Commissioner Varner and the Former Congressmen’s prior experiences also warrant attention. Specifically, Commissioner Varner and Former Congressmen Marino and Shuster have first-hand knowledge of not only their individual regions, but also the multitude of the practical concerns and difficulties involved in redistricting. Such prior participation in a decennial event, courts have noted, is a significant consideration in determining whether intervention is appropriate. *See, e.g., Johnson*, 915 F. Supp. At 1538-39 (allowing intervention by a group that had participated in proceedings leading to the adoption of a redistricting plan because it would “bring a unique perspective to the case”). Similarly, Former Congressman Costello’s prior role on the Chester County Board of Commission, which functions as the Board of Elections under the Election Code, gives him an understanding of the practical issues involved in the implementation of a new plan by county boards of elections.

congressional district plan for purposes of carrying out elections in the Commonwealth do not necessarily align with the Intervenors' interests in ensuring that an enacted congressional district plan complies with constitutional requirements. Nor do Respondents have an interest specific to any locale or area of the Commonwealth. Rather, in a proper sense, Respondents' duties in this respect are largely ministerial. Because Intervenors' interests differ substantially and materially from Petitioners and Respondents, their interests are not adequately represented in the present matter. In short, therefore, Proposed Intervenors' interests are not adequately represented. Pa.R.C.P. No. 2329(2).

Third, Proposed Intervenors have not unduly delayed in making this Application, nor will the intervention unduly delay, embarrass or prejudice the trial or adjudication of rights of the parties. *See* Pa.R.C.P. 2329(3). Petitioners filed the Petition for Review two weeks prior to Proposed Intervenors' Application and Respondents have not yet filed any responsive pleading. Further, this Application is timely filed under this Court's December 20 Order and Proposed Intervenors intend to comply with every deadline and procedural directive that this Court

deems appropriate. There is no prejudice or undue delay in granting intervention at this early stage; nor do the Carter Petitioners offer an adequate explanation of how intervention will cause undue delay or prejudice. Indeed, while the Carter Petitioners suggest that the nature of this action counsels in favor of limiting the number of intervenors, that argument lacks merit.⁵ Indeed, the Mellow Court liberally allowed intervention in an effort to promote equity and openness in the process, even permitting Congressman Lucien Blackwell to intervene (limited to filing a brief) after the record closed, thus indicating the Court's willingness to permit intervention. *See id.* at 212-13; *see also id.* at 205 (“The Attorney General intervened and additional parties, a number of whom submitted plans of their own, were also granted intervenor status to represent the interests of specific counties or other geographical areas around the State or to protect the voting rights of African-Americans in various congressional districts.”). Indeed, adequacy of representation in the redistricting context is not readily assumed and thus the “normal practice in reapportionment controversies” is to allow intervention liberally. *See Clark v. Putnam Cty.*, 168 F.3d 458, 462 n.3

⁵ Respondents make a similar claim.

(11th Cir. 1999) (citing *Nash v. Blunt*, 140 F.R.D. 400, 402 (W.D.Mo. 1992)). Accordingly, there is no basis to deny intervention for the Proposed Intervenor who have established an interest under Rule 2327.

III. CONCLUSION

For the foregoing reasons, Proposed Intervenor respectfully request that this Court grant the Application.

Respectfully submitted,

Dated: January 5, 2022

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WORD COUNT CERTIFICATION

I hereby certify that the above brief complies with the word count limits of Pa.R.A.P. 2135(a)(1). Based on the word count feature of the word processing system used to prepare this brief, this document contains 5028 words, exclusive of the cover page, tables, and the signature block.

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