

IN THE SUPREME 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.

Leigh 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,

Phillip 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.
Freeman; and Garth Isaak,

Petitioners,

v.

CASES CONSOLIDATED

No. 7 MM 2022

**AMICUS PARTICIPANTS’
 (“CITIZEN-VOTERS”) BRIEF IN
SUPPORT OF EXCEPTIONS TO
REPORT CONTAINING PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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Leigh 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,

Leslie Osche, Kim Geyer, Michael
T. Slupe, Candee Barnes, Thomas
Reep, Brandy Reep, Kenneth
Lunsford, Tammy Lunsford, James
Thompson, Pamela Thompson,
Joseph Renwick, Stephanie
Renwick, Louis Capozzi, David
Ball, Mary E. Owlett, Kristine Eng,
Justin Behrens, James P.
Foreman, Matthew J. Stuckey,
Anthony J. Luther, Linda C.
Daniels, Jeffrey Piccola, James
Vasilko, Jay Hagerman, and Evan
P. Smith,

Amicus Participants,

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**AMICUS PARTICIPANTS’ (“CITIZEN-VOTERS”) BRIEF IN SUPPORT
OF EXCEPTIONS TO REPORT CONTAINING PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

Amicus Participants (“Citizen Voters”)¹, by and through their undersigned counsel, hereby file the within Brief in Support of Amicus Participants’ Exceptions to the Master’s Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendations of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar/Schedule (“Master’s Report”), stating in support thereof as follows:

I. Summary of Argument.

Amicus Participants (“Citizen Voters”) except to the Master’s Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendations of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar/Schedule as the Court erred in extending deference to the HB 2146 Map for the sole reason that such map had been submitted to, and approved by, Pennsylvania’s General Assembly; erred in declining to consider the Citizen Voters plan for the reason that the

¹ Leslie Osche, Kim Geyer, Michael T. Slupe, Candee Barnes, Thomas Reep, Brandy Reep, Kenneth Lunsford, Tammy Lunsford, James Thompson, Pamela Thompson, Joseph Renwick, Stephanie Renwick, Louis Capozzi, David Ball, Mary E. Owlett, Kristine Eng, Justin Behrens, James P. Foreman, Matthew J. Stuckey, Anthony J. Luther, Linda C. Daniels, Jeffrey Piccola, James Vasilko, Jay Hagerman, and Evan P. Smith.

plan was unaccompanied by an expert report; erred in concluding that Citizen Voters plan, “has a two-person difference in population from the largest to their smallest districts;” and, in the alternative, erred in declining to adopt the Reschenthaler 1 plan as the Master’s recommended map for adoption by the Pennsylvania Supreme Court.

The Court’s Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendations of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar/Schedule concluded that

[b]ased on all of the foregoing, the Court does not recommend adopting the Citizen Voters’ Plan for the congressional districts in the Commonwealth of Pennsylvania because:

- 1) It was not accompanied by an expert report or testimony consequently, the Court received no testimonial or written explanation concerning why the map drew the lines in the particular manner that it did and to demonstrate why the divides in the maps were absolutely necessary to achieve population equality as opposed to some other secondary or impermissible goal;
- 2) It has a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one-person deviation.

See Master’s Report, at pg. 204.

As an initial matter, the Court’s Order permitting Amicus Participants to submit a proposed map for the Master’s consideration did not require the submission of an expert report as a condition for the Master’s consideration

of any submitted maps. Respectfully, the Master's refusal to consider maps submitted without an expert report is in error as Amicus Participant Citizen-Voters' map submission included a supporting brief which brief set forth the Citizen-Voters' reasons for drafting their map in the manner that they did.

Further, the Master erred in determining that Citizen-Voters' map had, "a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one-person deviation," as the Citizen-Voters' map did not have any districts exceeding a variation of "-1."

The Master additionally erred in declining to recommend the adoption of Citizen-Voters' map as Citizen-Voters' map satisfies all of the constitutional requirements for a proposed congressional district map in the Commonwealth of Pennsylvania and was one of the plans dividing the fewest counties, cities, incorporated towns, boroughs, townships, and wards, thereby displaying the Citizen-Voters' efforts to maintain communities of interest.

Lastly, in the alternative, the Master erred in declining to adopt the Reschenthaler 1 Map as such map satisfies all of the constitutional requirements for a proposed congressional district map; satisfies the ideals and goals expressed by the Free and Equal Elections Clause, as set forth

by the Pennsylvania Supreme Court; and consistently outperformed other maps in virtually every metric set forth by this Court. Importantly, to this Amicus Participant, it has the lowest number of county splits or divisions.

II. Argument.

A. The Master’s Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendations of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar/Schedule improperly disqualified Amicus Participants Citizen-Voters’ Proposed Congressional Map.

The Master’s Report expressly did not recommend the adoption of the Citizen Voters’ map because: 1) Citizen Voters did not submit an expert report or testimony concerning, “why the map drew the lines in the particular manner that it did;” and 2) Citizen Voters map allegedly had a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one-person deviation.

1. Citizen-Voters’ were not required to submit an expert report for the consideration of their map.

On January 14, 2022, following oral argument on the ten applications to intervene filed in the present matter, the Court issued an Order denying the applications for leave to intervene filed by Voters of the Commonwealth of Pennsylvania, Citizen Voters, Draw the Lines-PA, and Khalif Ali, *et al.*

Pursuant to the Court's January 14, 2022, Order, Voters of the Commonwealth of Pennsylvania, Citizen Voters, Draw the Lines-PA, and Khalif Ali, *et al.* were permitted to participate in the present matter as "Amicus Participants." Amicus Participants were permitted to participate in the present matter as follows,

Amicus Participants who wish to submit for the Court's consideration one (1) proposed 17-district congressional redistricting map/plan that is consistent with the results of the 2020 Census shall file the proposed map/plan and, if the Amicus Participant chooses to so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on Monday, January 24, 2022.

As shown by Court's Order dated January 14, 2022, Amicus Participants were not required to submit an expert report for the consideration of their proposed congressional map.

Despite the fact that an expert report was not mandated for the consideration of a proposed 17-district congressional redistricting map/plan, the Master refused to consider or recommend the adoption of Citizen Voters' proposed map, stating that,

[t]he Citizen Voters did not provide an expert report to support their map. Consequently, the Court received no expert testimonial or written explanation concerning why the map drew the lines in the particular manner that it did and, perhaps, more importantly, to demonstrate why the divides in the maps were absolutely necessary to achieve population equality as opposed to some other secondary or impermissible goal. There was no discussion or evidence whatsoever presented by Citizen Voters that their district lines preserved communities of interests. Left

with this evidentiary mode of speculation, the Court provides little to no weight to the map submitted by the Citizen Voters.

See Master's Report, FF 11, at pg. 156.

While Citizen Voters acknowledge that an expert report was not submitted with their proposed map, and Citizen Voters were not permitted to offer testimony at the evidentiary hearings held in this matter due to their status as an Amicus Participant, the Citizen Voters did submit a brief with their proposed map. The Citizen Voters' brief sets forth the efforts to maintain communities of interest as well as the reasons for the layout of their map as follows:

The proposed Congressional Redistricting Map submitted by the Citizen-Voters restores the following counties which were split by Pennsylvania's 2018 Congressional District Map: Washington, Cambria, Butler, and Centre. The proposed map endeavors to maintain communities of interest in one congressional district. For example, the Citizen Voters' proposed Map includes the City of Pittsburgh and the South Hills of Allegheny County in one district in District 17. In drafting the Citizen Voters' proposed map, efforts were taken to ensure that the proposed map split fewer municipalities than Pennsylvania's 2018 Congressional District Map, with fewer than sixteen (16) municipalities split by the Citizen Voters' map as compared to the nineteen (19) municipalities split by Pennsylvania's 2018 Congressional District Map. Further, the Citizen Voters' Map splits fewer than One Hundred and Nine (109) school districts as compared to the One Hundred and Twenty-Four (124) school districts split by Pennsylvania's 2018 Congressional District Map.

See Amicus Participants Citizen Voters' Brief, at Pg. 1-2.

Citizen Voters' proposed map, and the accompanying Brief in Support, set forth the Citizen-Voters' efforts to maintain communities of interest, as opposed to some other secondary or impermissible goal. Accordingly, the Master erred in providing, "little to no weight," to the map submitted by the Citizen Voters.

2. The Master erred in finding that Citizen-Voters' map had a two-person difference in population from the largest to their smallest districts, as the Citizen-Voters' map had a maximum deviation of one-person.

The Master refused to recommend the adoption of the Citizen Voters' map because, "it has a two-person difference in population from the largest to their smallest districts, while the majority of other plans were able to achieve a one-person deviation." See Master's Report, at Pg. 204. However, this finding is in error as the Citizen-Voters' map does not contain any districts which have a deviation greater than one person.

Seemingly, the fact that Citizen-Voters' map does not have a district with a deviation greater than one-person was recognized by the Master earlier in the report. The Master's Report's Finding of Fact 18 provides, "[h]owever, ***unlike the other plans that have a maximum population deviation of one person***, the Carter Plan and the House Democratic Plan both result in districts that have a two-person deviation." See Master's Report, FF 18, at Pg. 192. (emphasis added).

An examination of the map submitted by Citizen Voters reveals that the population deviation is set forth on the face of the map and that such deviation does not exceed one in any of the proposed districts therein. Citizen Voters' proposed 17th District, 14th District, 9th District, and 7th District have a deviation of one person, while the remaining proposed districts do not deviate at all. A true and correct copy of the data sheets utilized in drafting the Citizen Voters proposed 17-district congressional map, showing a maximum deviation of one person, is attached hereto as "Exhibit A."

Accordingly, the Master erred in refusing to consider Citizen-Voters' proposed map because, "[i]t has a two-person difference in population from the largest to their smallest districts," as Citizen-Voters' proposed map did not create any districts with a deviation greater than one person.

3. The Master erred in refusing to adopt Citizen-Voters' map as such map satisfies all of the constitutional requirements of a proposed congressional district map in the Commonwealth of Pennsylvania.

The Master's Report concluded that it does not recommend the adoption of Citizen-Voters' map in the present matter, and instead recommended the adoption of the HB 2146 Map. See Master's Report, FF 97, at Pg. 216. While the Court's analysis of the HB 2146 Map was well reasoned and thoroughly conducted, the Court ultimately extended great deference to HB 2146 simply by virtue of the map having gone through the

legislative process. However, an analysis of the Citizen-Voters' map reveals that it better satisfies all of the constitutional requirements for a proposed congressional map in the Commonwealth of Pennsylvania and consistently outperformed other maps in several metrics utilized by the Master to determine which map to recommend to this Court for adoption.

Article I, Section 5 of the Pennsylvania Constitution provides that, “[e]lections 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.”

The Pennsylvania Supreme Court has had occasion to review Pennsylvania's Free and Equal Elections Clause and has interpreted the same to prohibit, “any legislative scheme which has the effect of impermissibly diluting the potency of an individual's vote for candidates for elective office relative to that of other voters.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 809 (Pa. 2018); *citing City of Bethlehem v. Marcincin*, 515 A.2d 1320, 1323-24 (Pa. 1986). In so holding, the Court established “neutral benchmarks” to measure a congressional district map's compliance with Article I, Section 5 by drawing upon Article II, Section 16 of the Pennsylvania Constitution. Article II, Section 16 of the Pennsylvania Constitution provides,

[t]he Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed

of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township, or ward shall be divided in forming either a senatorial or representative district.

Pa. Const. Art. II, §16.

Upon review of Article II, Section 16, this Court held that to satisfy the requirements of Article I, Section 5 of the Pennsylvania Constitution, a congressional district map must be, “composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population.” *League of Women Voters*, 178 A.3d at 816-17.

In addition to the factors established by Article II, Section 16, the Court noted that other factors such as, “the preservation of prior district lines, protection of incumbents, or the maintenance of the political balance which existed after the prior reapportionment.” *Id.* at 817. One such additional factor to be reviewed by a Court in adopting a proposed congressional redistricting plan is, “whether the plans operate to dilute the voting impact of any minority,” under Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973. *See Mellow v. Mitchell*, 607 A.2d 204, 208 (Pa. 1992). While such factors are permissible to consider in determining the constitutionality of a proposed

congressional district map, these factors are, “wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts.” As stated by this Court,

[w]e recognize that other factors have historically played a role in the drawing of legislative districts, such as the preservation of prior district lines, protection of incumbents, or the maintenance of the political balance which existed after the prior reapportionment. However, we view these factors to be wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts.

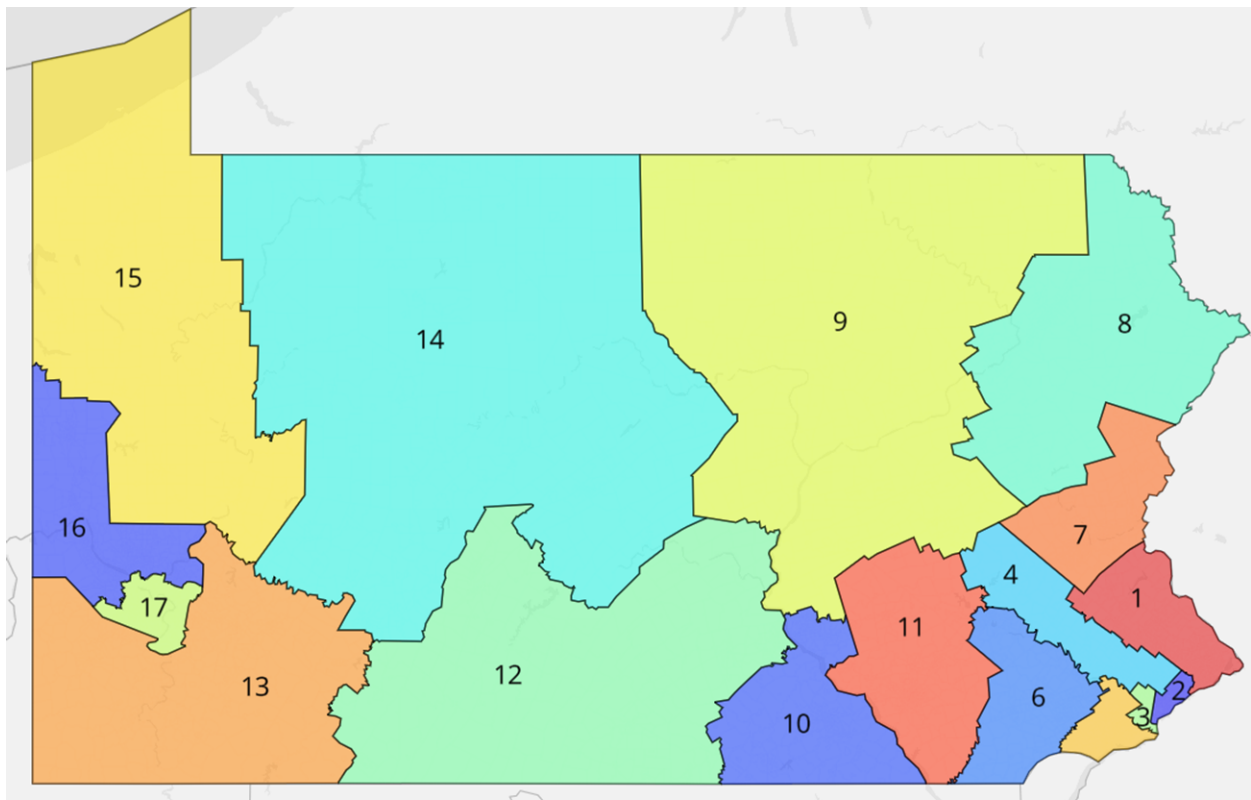
League of Women Voters, 178 A.3d at 817; citing *Holt v. 2011 Legislative Reapportionment Com’n*, 38 A.3d 711, 1235 (Pa. 2011).

Citizen-Voters’ proposed map satisfies the constitutional requirements that a proposed map be, “composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population.” *League of Women Voters*, 178 A.3d at 816-17.

Beginning with the requirement that a proposed map be composed of compact and contiguous territory, Citizen-Voter’s map was given a Polsby score of 0.3494, a Schwartzberg score of 1.714, and a Reock score of

0.4406. As noted by the Master, “[a]ll plans presented to the Court met the contiguous requirement. All plans proposed districts of contiguous territory. See Master’s Report, CL 1, at Pg. 137; *citing* Duchin Expert Rebuttal 2. As shown by the Citizen-Voters’ proposed congressional district map below, such map satisfies the constitutional requirement that maps be composed of company and contiguous territory.

Citizen-Voters’ Proposed Map



In regard to the requirement that a proposed map be nearly equal in population as practicable, Citizen-Voters’ proposed map out-performed the Carter Plan, House Democratic Plan, and the Ali Plan. See Master’s Report,

at Pg. 137-38. The ideal district population for each of the Commonwealth's 17 reapportioned congressional districts is approximately 764,864 or 764,865 persons. See Master's Report, FF 2, at Pg. 138. Of the 17 plans submitted to the Master for consideration, all plans but the Carter Plan and the House Democratic Plan were able to reach a maximum deviation from the ideal district population of one individual. Additionally, the Master concluded that the Ali Plan, "cannot appropriately be compared to other maps," because of its reliance on Data Set #2, which provides for the reallocation of prisoners to their addresses prior to incarceration.

Citizen-Voters' plan also satisfies the constitutional requirement that a proposed redistricting map, "not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population." The Citizen-Voters' Plan divided 14 counties, 16 municipalities, and 21 wards. These figures place the Citizen-Voters' map in the lowest number of municipal splits of the maps submitted to the Master and the second fewest in county splits. See Master's Report, FF 36-38, at Pg. 146.

Lastly, Citizen-Voters' plan satisfies the extra-constitutional considerations regarding the adequacy of a proposed congressional map such as, "the preservation of prior district lines, protection of incumbents, or the maintenance of the political balance which existed after the prior

reapportionment.” As noted in the Brief filed by the Citizen-Voters, the Citizen-Voters’ map restores the counties of Washington, Cambria, Butler, and Centre, which were split by Pennsylvania’s 2018 Congressional District Map, thereby preserving the historical district lines of these counties. Further, Citizen-Voters’ map maintains communities of interest by maintaining the City of Pittsburgh in one contiguous district together with the South Hills of Allegheny County. See Citizen-Voters’ Brief, at Pg. 1.

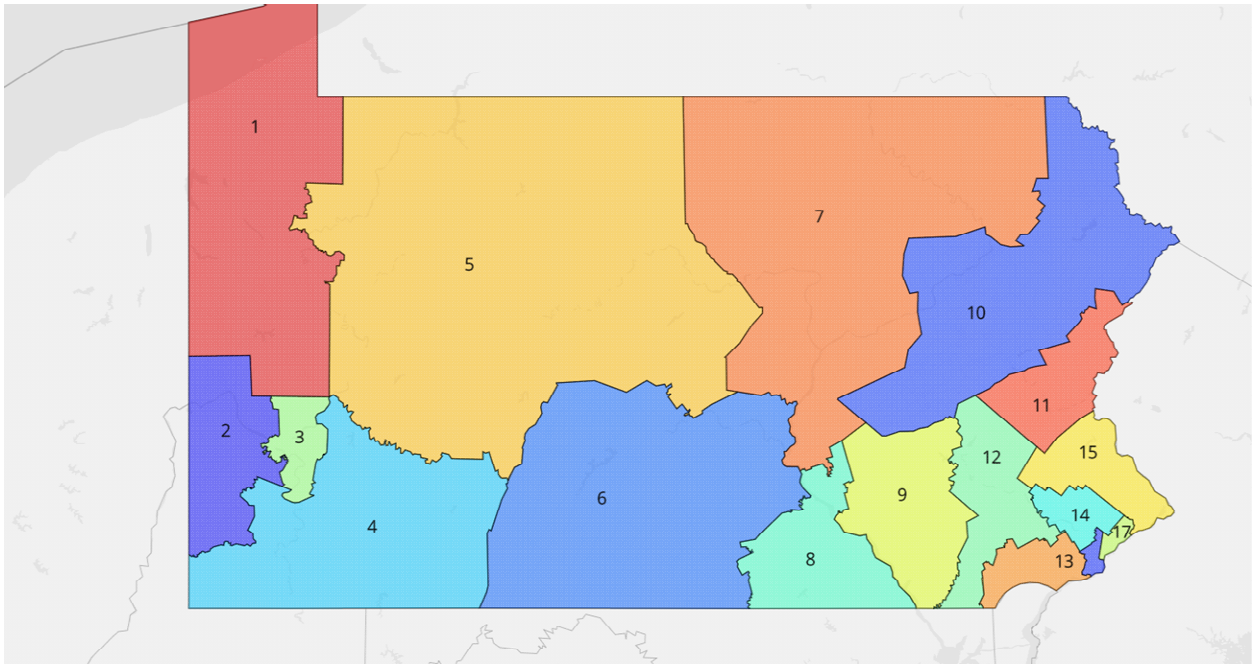
Accordingly, as Citizen-Voters’ map satisfy the constitutional requirements for a proposed redistricting map in the Commonwealth of Pennsylvania and has exceed other maps in several metrics reviewed by this Court, the Master has erred in refusing to recommend the adoption of Citizen-Voters’ map.

B. The Master’s Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendations of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar/Schedule improperly disqualified the Reschenthaler 1 Proposed Congressional Map.

In the alternative to Section A, the Master’s Report erred in failing to recommend the adoption of the Reschenthaler 1 proposed congressional map as such map best meets the criteria set forth by the Pennsylvania Supreme Court’s prior case law and best satisfies the criteria reviewed by the Master below.

As noted by Dr. Duchin, and as further shown by the map below, the Reschenthaler 1 map is contiguous, closely balanced in terms of population, and “reasonably compact,” thereby satisfying the first constitutional requirement for a proposed district map. See Master’s Report, FF 168, at Pg. 85. Further, the Reschenthaler 1 map had the lowest county split of all maps submitted, showing an “aggressive pursuit of county integrity,” and had the lowest number of municipal splits. See January 27, 2022, Transcript, at Pg. 459. Lastly, the Reschenthaler 1 map was able to produce 17-congressional districts with no population deviation greater than one person. See Master’s Report, CL 2, at Pg. 138.

Reschenthaler 1 Proposed Map



The Reschenthaler 1 map represents a “first-tier” standard of excellence in the drafting of a proposed 17 district congressional plan and easily satisfies both the neutral criteria set forth by this Court in *League of Women Voters*, as well as the extra-constitutional considerations for a proposed congressional map. See Master’s Report, FF 51, at Pg. 206. The Reschenthaler 1 map’s satisfaction of these considerations together with its preservation of communities of interest make it the clear choice to be recommended for adoption by this Court. The Reschenthaler 1 map consistently outperformed almost every other map in each metric that the Master utilized in reviewing the maps.

Accordingly, should this Court decide not to adopt Citizen-Voters’ proposed congressional map, Amicus Participants Citizen-Voters urge this Court to adopt the Reschenthaler 1 map as it satisfies all of the neutral criteria for the creation of a congressional district map in the Commonwealth of Pennsylvania, satisfies all of the extra-constitutional considerations such as the maintaining of communities of interest, and consistently outperformed the other maps submitted to the Master.

III. Conclusion.

The Master's Report in the present matter sets forth a very well-reasoned and thorough legal analysis of the multiple maps submitted to the Court on an expedited basis. The efforts of the Master to create such an extensive report in a timely manner are recognized and deeply appreciated by Amicus Participants Citizen-Voters.

However, notwithstanding the thorough legal analysis, several findings of fact in the Master's Report were incorrect and necessitate the filing of the present exceptions. The Citizen-Voters were not required to submit an expert report in order to have their map considered by the Master, and the Master erred in finding that Citizen-Voters' map deviated by more than one person per district.

In conclusion, Amicus Participants Citizen-Voters urge this Court to accept and consider Citizen Voters' proposed 17-district congressional map for adoption in the Commonwealth of Pennsylvania as Citizen-Voters' map was improperly disqualified by the Master and satisfies all of the constitutional requirements for a proposed congressional redistricting plan in the Commonwealth of Pennsylvania.

In the alternative, Amicus Participants Citizen-Voters urge this Court to accept and consider the Reschenthaler 1 map in the Commonwealth of

Pennsylvania as such map also satisfies all of the constitutional requirements for a proposed congressional redistricting plan and consistently outperformed other maps submitted to the Master for consideration.

Respectfully submitted,

**DILLON, McCANDLESS, KING,
COULTER & GRAHAM, L.L.P.**

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District	Total Population	Deviation
District 1	764865	0
District 2	764865	0
District 3	764864	-1
District 4	764865	0
District 5	764865	0
District 6	764865	0
District 7	764864	-1
District 8	764865	0
District 9	764864	-1
District 10	764865	0
District 11	764865	0
District 12	764865	0
District 13	764865	0
District 14	764864	-1
District 15	764865	0
District 16	764865	0
District 17	764864	-1

EXHIBIT A

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

CERTIFICATE OF SERVICE

I certify that this filing was served via PACFile upon all counsel of record this 14th day of February 2022.

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