

IN THE SUPREME COURT OF PENNSYLVANIA

No. 7 MM 2022

CAROL ANN CARTER, ET AL.

v.

LEIGH M. CHAPMAN, ET AL.

PHILIP T. GRESSMAN, ET AL.

v.

LEIGH M. CHAPMAN, ET AL.

**BRIEF IN SUPPORT OF SPECIAL MASTER'S REPORT AND
EXCEPTIONS TO SPECIAL MASTER'S REPORT
BY GUY RESCHENTHALER, JEFFREY VARNER,
TOM MARINO, RYAN COSTELLO, AND BUD SHUSTER**

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

As developed in the ensuing pages, the Congressional Intervenors are in full accord with many aspect of the Special Master's recommendations. Indeed, in terms of the proposed findings of fact, the Special Master's Report ("SMR") ably and fairly relays the content and nature of the facts adduced in the proceedings and, with the exception of a few minor miscalculations that are undoubtedly the product of the expedited nature of these proceedings, its factual rendition is free of error. Similarly, a substantial portion of the Special Master's proposed legal conclusions are well reasoned and should be adopted. In particular, the SMR's recommendations are cogent and well-grounded with regard to compactness and contiguity, the importance of communities of interest, the role of partisan considerations in the present matter, the "least change" approach to redistricting advocated by the Carter Petitions, and the use of prisoner-adjusted census data.

Nevertheless, some errors warrant closer scrutiny from this Court. *First*, the Special Master's proposed finding that the Carter Plan splits only 13 counties, rather than 14, is not supported by the record and is contrary to law. *Second*, the Special Master's assessment of the equal

population requirement under the United States Constitution is legally flawed. *Third*, the Special Master misconstrued the United States Constitution's prohibition against racial gerrymandering, as applied to the present action. *Fourth*, the Special Master misinterpreted the prohibition against splitting political subdivisions unless "absolutely necessary" and did not afford this consideration sufficient weight. *Finally*, in light of the foregoing, the Special Master also erred in her ultimate recommendation that this Court should select HB 2146, rather than Reschenthaler 1 or 2.

II. BACKGROUND

A. Constitutional Factors for a Congressional Plan

1. Equal Population

Reschenthaler 1 and 2 achieve equal population because both maps have only a one person deviation between districts—which is the lowest possible deviation. *See* **Special Master Report (“SMR”) at 138, ¶¶ CL1-CL2**; *see also* N.T. 1/27/22 at 164:15-23 (Dr. Rodden); *id.* at 284:21-285:8 (Dr. DeFord); *id.* at 458:9-13 (Dr. Duchin); Brunell Report at 1-2.

Only the House Democratic Caucus map and the Carter map deviate by *more* than one person—both have a two person deviation. *See* **SMR at 138, ¶ CL2**; *see also* N.T. 204:4-20 (Dr. Rodden).

2. Compactness

Reschenthaler 1 and Reschenthaler 2 have compactness scores in a narrow range and do not feature highly non-compact districts based upon Dr. Rodden’s calculations. *See* **SMR at 65, ¶ FF48**; *see also* Rodden Reply Report at 3; N.T. 1/27/22 at 166:10-17. Dr. Rodden is “confident” in the numbers in his report. *See* N.T. 1/27/22 at 163:20-164:7.

Further, based upon Dr. DeFord's review, Reschenthaler 1 and Reschenthaler 2 have equal or better compactness scores on every measure as compared to the Gressman Map. *See SMR at 69, ¶¶ FF77-FF78; see also* N.T. 1/27/22 at 285:13-22; DeFord Reply Report at 9.

Dr. Duchin agrees that Reschenthaler 1 and Reschenthaler 2 have compact districts. *See SMR at 79, ¶¶ FF137-FF138; SMR at 147-148, ¶¶ FF1-3; see also* N.T. 1/27/22 at 458:15-22. Dr. Duchin is "very confident in her numbers." *See* N.T. 1/27/22 at 457:16-458:1. She rated Reschenthaler 1 as a plan that meets "a high excellence standard for traditional criteria," and rated Reschenthaler 2 as a plan that meets "an excellence standard for traditional criteria[.]" *See SMR at 79-80, ¶¶ FF138-139; see also* Duchin Reply Report at 3.

Reschenthaler 1 has an average Reock score of .435. *See* Brunell Report at 3; N.T. 1/27/22 at 168:3-11 (Dr. Rodden testifying, stating Reschenthaler 1 has a Reock score of .43). Reschenthaler 1 has an average Polsby-Popper score of .363. *See* Brunell Report at 3. Reschenthaler 2 has an average Reock score of .424. *See* Brunell Report at 3; N.T. 1/27/22 at 168:3-11 (Dr. Rodden testifying). Reschenthaler 2 has an average Polsby-Popper score of .352. Brunell Report at 3.

Reschenthaler 1 and Reschenthaler 2 are reasonably compact. *See SMR at 104, ¶ FF278; see also Brunell Report at 2-3.*

3. Contiguity

All 17 districts in Reschenthaler 1 are contiguous, as multiple experts concluded. *See SMR at 137-138, ¶¶ CL1-CL3; see also N.T. 1/27/22 at 165:3-9 (Dr. Rodden); N.T. 1/27/22 at 285:9-12 (Dr. DeFord); N.T. 1/27/22 at 458:4-8 (Dr. Duchin); Brunell Report at 2.*

4. Splits of Counties, Municipalities, and Wards

Reschenthaler 1 and 2 split just 13 counties. *See SMR at 144-145, ¶¶ FF21-FF22; SMR at 147, ¶ FF41-FF42; SMR at 193, ¶ 24; see also N.T. 1/27/22 at 166: 3-9 (Dr. Rodden); id. at 458:23-459:4 (Dr. Duchin); Brunell Report at 4.* No other maps before the Court split fewer Counties.¹ *See SMR at 146, ¶ FF36; SMR at 147, ¶ FF41; SMR at 193, ¶ 24.*

¹ While the Special Master's Report finds that the Carter map also only splits 13 counties, *see SMR at 143, ¶ FF 7*, that finding is predicated on an error, as explained in the argument section below. And even if true, Reschenthaler 1 and 2 remain the *only* maps that split just 13 counties **and** just 16 municipalities; all others split more in one or both government units. *See SMR at 147, ¶ FF41* ("It is worth emphasizing, however, that of all the plans proposed, only the Reschenthaler Plans were able to divide only 13 counties and 16 municipalities—the lowest number in both categories."); *see SMR at 193, ¶ 24* ("The Reschenthaler Plans remarkably divide only 13 counties and 16 municipalities, which is the lowest numbers in both categories.").

Reschenthaler 1 and 2 also had only 29 county “pieces” or “segments,” which was also the fewest of all the maps before the Court. *See SMR at 206-07, ¶ 54.*

Reschenthaler 1 and 2 split just 16 municipalities. *See SMR at 144-145, ¶¶ FF21-FF22; at 147, ¶ FF41-FF42; SMR at 193, ¶ 24; see also Duchin Reply Report at 2 (Table 1); Barber Reply Report at 8; Brunell Report at 5 (Table 5).*

No other maps before the Court split *fewer* municipalities (though some split an equal amount). *See SMR at 146, ¶ FF37; SMR at 147, ¶ FF41; SMR at 193, ¶ 24* (“The Reschenthaler Plans remarkably divide only 13 counties and 16 municipalities, which is the lowest numbers in both categories.”).

Reschenthaler 1 and 2 split those municipalities into only 33 “segments,” or “pieces.” *See SMR at 206-07, ¶ 54.* Again, although some split an equal amount, no other proposal before the Court contained fewer municipal “segments” or “pieces.”

At least three experts—none of whom were experts for the Congressional Intervenors—testified that it is possible to create a 17-district plan that splits only 13 counties and 16 municipalities, and still

has equal population, is contiguous, and is reasonably compact—just as Reschenthaler 1 and 2 propose. *See SMR at 147, ¶¶ FF42-FF43; see also* N.T. 1/27/22 at 43:19-25; 170:15-20 (Dr. Rodden); N.T. 1/27/22 at 287:11-20 (Dr. DeFord); N.T. 1/27/22 at 461:5-21 (Dr. Duchin).

Finally, Reschenthaler 1 and 2 split 25 wards and 24 wards, respectively. *See SMR at 144-145, ¶¶ FF21-FF22; see also* DeFord Reply Report at 7, ¶ 20 (Table 5); Brunell Report at 6 (Table 7).

5. Communities of Interest

Dr. Keith Naughton explained that in order to achieve a good score under certain compactness models, certain communities may be included where they would not otherwise fit in terms of a community of interest. *See SMR at 154, ¶¶ FF2-FF4; SMR at 155, ¶¶ FF7, FF9; see also* N.T. 1/28/22 at 709:12-710:12. Dr. Naughton found that a compactness score may not be satisfied when communities are grouped together based upon their interests. *SMR at 154, ¶¶ FF2-FF4; SMR at 155, ¶¶ FF7, FF9; see also* N.T. 1/28/22 at 712:1-16. Dr. Naughton testified that keeping people with common interests together allows for better representation of those interests. *See SMR at 155, ¶¶ FF6-FF7; see also* N.T. 1/28/22 at 697:5-698:3.

To support his opinion regarding communities of interest, Dr. Naughton focused on a few key areas in the Commonwealth. For instance, he noted that Reschenthaler 1 and 2 keep Pittsburgh within one district. *See SMR at 95, ¶ FF228.* Dr. Naughton testified that Pittsburgh's communities of interests are best represented by keeping the city within the same district. *See SMR at 96, ¶ FF229; SMR at 155, ¶ FF5; see also N.T. 1/28/22 at 712:21-715:13.*

Dr. Naughton further noted that Reschenthaler 1 and 2 keep Bucks County within one District, and not with Philadelphia County. *See SMR at 157, ¶ FF15.* Dr. Naughton testified that the communities within Bucks County are best served by keeping the County within the same district and connecting it with nearby Montgomery County instead of with Philadelphia. *See SMR at 157-159, ¶¶ FF15-FF21; see also N.T. 1/28/22 at 715:14-716:13.* In a similar vein, he noted that Reschenthaler 1 and 2 connect Philadelphia with Delaware County in District 16. *See SMR at 96, ¶ FF230.* Dr. Naughton testified that Delaware County and Philadelphia county share similar communities of interest along their border, and that a map connecting them was ideal.

See **SMR at 159, ¶¶ FF19-FF21**; *see also* N.T. 1/28/22 at 786: 19-24; 840: 21-841:2.

Finally, Dr. Naughton observed that Reschenthaler 1 and 2 place Scranton and Wilkes-Barre in different districts. *See SMR at 96, ¶ FF231*. Dr. Naughton testified that Scranton and Wilkes-Barre, in the past, were in separate districts and that those communities prefer being in separate districts. *See SMR at 96, ¶ FF231; see also* N.T. 1/28/22 at 734:2-736:12.

6. Partisan Fairness and Pennsylvania Geography

(a) Mean-Median Scores

Reschenthaler 1 and 2 score well on the mean-median metric, regardless of the expert consulted; indeed, by expert, the scores were found to be as follows:

MEAN-MEDIAN			
Expert	Resch. 1	Resch. 2	Source
Barber	-2.1%	-2.2%	SMR at 170, ¶¶ FF18-FF19
Brunell	1.6%	1.89%	SMR at 170, ¶¶ FF18-FF19
DeFord	-2.7%	-2.6%	SMR at 170, ¶¶ FF18-FF19
Duchin	-2.1%	-2.1%	SMR at 170, ¶¶ FF18-FF19 ²
Rodden	1%	1%	SMR at 170, ¶¶ FF18-FF19

As is material to mean-median, in *League of Women Voters*, the Supreme Court noted that in Dr. Chen’s simulation of 500 potential plans that relied only on Pennsylvania’s traditional districting criteria, the average mean-median gap created by the simulated plans was generally between 0% and 3%, with some plans reaching a maximum of 4%. *See SMR at 166; see also League of Women Voters*, 178 A.3d at 770, 774. In this matter, Dr. Duchin, like Dr. Chen, also ran simulations, but this time for 100,000 plans using only traditional districting criteria. *See SMR at 76, ¶ FF119; see also Duchin Reply Report at 2* (discussing criteria used to create simulations), at 18 (discussing number of

² The Special Master’s Report finds Dr. Duchin’s numbers to be -25.24% and -25.34% respectively, and then suggests her analysis can be discredited because it was an outlier. *See SMR at 170, ¶¶ FF18-FF19; SMR at 172, ¶ FF26*. However, Dr. Duchin testified at trial that her numbers were a raw number, aggregated from across 12 elections; thus to convert it to a percent, the raw number should be first divided by 12 before converted to a percentage. *See N.T. 1/27/22 at 455:14-456:12* (Dr. Duchin explaining how to convert chart to a percentage). Thus, the numbers reported in this Brief attributed to Dr. Duchin reflect the division by 12 that she explained at trial.

simulations). According to her reply report, as elaborated at trial (specifically, with her explanation of how to convert her units of measure to a percentage), no *range* of mean/median results for the simulations were reported, but an average was, which was **-2.39%**. See Duchin Reply Report at 4 (Table 3: column three labeled “total mean-median”; row labeled “ensemble mean”; divided by 12 and multiplied times 100); N.T. 1/27/22 at 455:14-456:12 (Dr. Duchin explaining how to convert chart to a percentage). Her chart reveals that Reschenthaler 1 and 2 both scored a *lower* mean/median average than the 100,000 simulations, with averages of **-2.10%** and **-2.11%** respectively. See Duchin Reply Report at 4 (Table 3: column three labeled “total mean-median”; rows labeled “Reschenthaler 1” and “Reschenthaler 2”; divided by 12 and multiplied times 100).

**(b) Other Methods of Evaluating Partisan
Fairness—Seat Counts**

According to various experts in this case, the two Reschenthaler maps project to produce a variety of expected outcomes by seat counts (R v. D), though each of the experts reported the information in somewhat different ways (as noted) and based on different elections to simulate the results:

PARTISAN MEASURES BY VARIOUS SEAT COUNTS			
Expert	Resch. 1	Resch. 2	Source
Barber	9 D 8 R	9 D 8 R	Barber Reply at 15 (Table 3) ³
Brunell	5 D 8 R 4 Toss-Up	5 D 8 R 4 Toss-Up	Brunell Report at 8 (Table 9)
DeFord	3 R Safe 5 D Safe 9 Responsive	3 R Safe 5 D Safe 9 Responsive	DeFord Reply at 12 (Table 11) ⁴
Duchin	8 D 9 R	8 D 9 R	Duchin Reply Report at 4 (Table 2) ⁵
Rodden	6 D 8 R 3 Toss-Up	7 D 8 R 2 Toss-Up	Rodden Reply Report at 9 (Table 5); N.T. 1/27/22 at 171:1-25 (Dr. Rodden)

(c) Political Geography

Pennsylvania’s unique political geography affects the analysis of partisan advantage in any proposed map. **SMR at 162, ¶ FF2**. In a 2013 article authored by Dr. Rodden regarding unintentional gerrymandering, his results “illustrate[d] a strong relationship between

³ Dr. Barber’s chart reflects “Democratic-leaning” districts. Barber Reply at 15 (Table 3).

⁴ Dr. DeFord’s chart reports on “safe” districts versus “responsive” districts, which describes where only one party was preferred in that district over 18 elections (a safe district) or where a candidate from each party was projected to be selected (a responsive district). DeFord Reply at 12 (Table 11).

⁵ Adding all lines for Reschenthaler 1 or Reschenthaler 2 in Dr. Duchin’s Table 2 produces 91 elected Democrats under the projections. Dividing that by the number of elections simulated—12—yields an average of 7.58 Democrats elected. Rounding up, since .58 of a person cannot be elected, the Reschenthaler maps project to elect 8 Democrats in any given election out of 17 possible seats, thus projecting to elect 9 Republicans in any given election (a difference of *just one*).

the geographic concentration of Democratic voters and electoral bias favoring Republicans.” *See SMR at 162, ¶ FF3; see also* N.T. 1/27/22 at 178:22-179:3, 179:23-180:9. Dr. Rodden also concluded in this article that “proving such intent in court will be difficult in states where equally egregious electoral bias can emerge purely from human geography.” *See SMR at 163, at ¶ FF5; see also* N.T. 1/27/22 at 181:6-14. Dr. Rodden believes these statements to be true today about Pennsylvania. *See SMR at 163, at ¶ FF6; N.T. 1/27/22 at 181:18-20.*

Dr. DeFord also acknowledges that there is a “partisan advantage to Republicans based on the political geography of the state[,]” so it is “not necessarily a surprise to see a slight tilt favoring Republicans” on the metrics he used. *See SMR at 163, ¶ FF7; see also* DeFord Initial Report 40, ¶ 104; N.T. 1/27/22 at 291:13-23. Analyzing the 2020 presidential election, Dr. DeFord found that “there is not a part of the state where Republican voters are as heavily concentrated as Democratic voters are in the Philadelphia and Pittsburgh areas.” *See SMR at 163, at ¶ FF8; see also* DeFord Initial Report 40, ¶ 104; N.T. 1/27/22 at 291:24-292:16.

Dr. Duchin’s report most compellingly demonstrates the partisan political geography of the Commonwealth. *See SMR at 164, ¶ FF9.* In her expert report, Dr. Duchin found that 100,000 randomly drawn districting plans “tend[ed] to exhibit pronounced advantage to Republicans across this full suite of recent elections.” *See SMR at 164, ¶ FF10; SMR at 196, ¶ 38; see also* Duchin Initial Report at 18. Dr. Duchin further found in metrics from the partisan symmetry family, including the mean-median score, “random plans favor Republicans,” while the Governor’s Plan “temper[s] that tendency.” *See SMR at 164, ¶ FF10; see also* Duchin Initial Report at 19.

With regard to partisan fairness and the effect of political geography, Dr. Naughton agrees that nonpolitical issues cause voters and nonvoters to coalesce in certain parts of the state. *See SMR at 96, ¶ FF232; see also* N.T. 1/28/22 at 696:13-17. Scientific models predicting future elections cannot account for the various factors that contribute to winning an election, including the party of the current president, whether it is a mid-term election, the state of the economy, and campaign fundraising. *See SMR at 96-97, ¶ FF233; see also* N.T. 1/28/252 at 700-15:24; 701:6-703:8, 704:10-16. Dr. Naughton agrees that

scientific models used by Dr. Rodden, Dr. DeFord, and Dr. Duchin do not account for these extraneous factors that contribute to winning an election. *See SMR at 97, ¶ FF234; see also* N.T. 1/28/22 at 703:9-12. Moreover, running congressional races in Pennsylvania is “very geographical,” and certain mapping choices, such as splitting the City of Pittsburgh or splitting Bucks County and Philadelphia can result in losing representation. *See SMR at 97, ¶ FF235; see also* N.T. 1/28/22 at 713:20-715:24. In Dr. Naughton’s expert opinion, there is no perfect variable to put in the equation to create a perfect map because there is going to be subjectivity. *See SMR at 97, ¶ FF236; see also* N.T. 1/28/22 at 766:6-22.

B. Voting Rights Act

Analyzing the results of the 2012 Presidential election, the 2018 House of Representatives election for District 3, and the 2017 Pennsylvania Supreme Court election, Dr. Brunell conducted a racial bloc voting analysis to determine whether or not a minority-majority district was required under the Voting Rights Act. *See Brunell Report at 10.* Based on the homogeneous precincts, Dr. Brunell found that the majority of both black and white voters supported the minority

candidate, indicating an absence of racially polarized voting. *See* Brunell Report at 10. Looking to ecological regression, Dr. Brunell again found that racially polarized voting is not present. *See* Brunell Report at 11.

The Gressman map has three majority-minority districts. *See* SMR at 182, ¶ FF4 DeFord Initial Report at 44, ¶ 117. All other maps have two majority-minority districts. *See* SMR at 182, ¶ FF5.

C. The “Best Map”

Many experts in this matter offered inconsistent, and thus not credible, testimony regarding which was the “best” map for the Court to choose. Indeed, when asked a near identical question—some version of “which map is best?”—the testimony produced the following answers:

Dr. Rodden (Carter’s expert): Carter map, *see* N.T. 1/27/22 at 162:13-20;

Dr. DeFord (Gressman’s expert): Gressman map, *see* N.T. 1/27/22 at 284:15-19; and

Dr. Duchin (Governor’s expert): Governor’s map, *see* N.T. 1/27/22 at 457:2-8.

The testimony was so inconsistent that Dr. Duchin actually stated when told she was the third expert to give a third different answer to the

question, “I am sure that there will be as many opinions as there are experts.” *See* N.T. 1/27/22 at 457:9-14.

Dr. Naughton opined, however, that there can be no such thing as a “best map” because that determination is too subjective. N.T. 1/28/22 at 164:25-765:13. Although there can be no best map, in Dr. Naughton’s expert opinion, Reschenthaler 1 and Reschenthaler 2 are good maps that would “represent the state well.” N.T. 1/28/22 at 772:8-14.

D. Snapshot of the Reschenthaler Maps

The characteristics of Reschenthaler 1 and Reschenthaler 2 can be summarized as follows:

Snapshot of Resch. Maps	Resch. 1	Resch. 2	Source
County Splits	13	13	SMR at 141, ¶ FF4; SMR at 144, ¶ FF21; SMR at 145, ¶ FF22; <i>see also</i> DeFord Reply Report at 5, ¶ 14; Duchin Reply Report at 2 (Table 1); Rodden Reply Report at 4 (Table 2); Barber Reply Report at 8 (Table 1); Brunell Report at 4 (Table 3)
County Segments	29	29	SMR at 141, ¶ FF4; <i>see also</i> Duchin Reply Report at 2 (Table 1); Brunell Report at 4 (Table 3)
Municipal Splits	16	16	SMR at 141, ¶ FF4; SMR at 144, ¶ FF21; SMR at 145, ¶ FF22; <i>see also</i> Duchin Reply Report at 2 (Table 1); Barber

Snapshot of Resch. Maps	Resch. 1	Resch. 2	Source
			Reply Report at 8; Brunell Report at 5 (Table 5)
Municipal Segments	33	33	SMR at 141, ¶ FF4; see also Duchin Reply Report at 2 (Table 1); Brunell Report at 5 (Table 5)
Ward Splits	25	24	SMR at 144, ¶ FF21; SMR at 144, ¶ FF21; SMR at 145, ¶ FF22; see also DeFord Reply Report at 7, ¶ 20 (Table 5); Brunell Report at 6 (Table 7)
Ward Segments	50	48	Brunell Report at 6 (Table 7)
Equal Population (Y/N)	Y	Y	SMR at 138, ¶¶ CL1-CL2; see also DeFord Reply Report at 4, ¶ 13; Duchin Reply Report at 2; Rodden Reply Report at 3; Brunell Report at 1
Contiguous (Y/N)	Y	Y	SMR at 137-138, ¶¶ CL1-CL3; see also DeFord Reply Report at 9, ¶ 27; Duchin Reply Report at 2; Rodden Reply Report at 3; Brunell Report at 2
Reock	a. 0.435 b. 0.4347 c. 0.43	a. 0.424 b. 0.4231 c. 0.41	a. Brunell Report at 3 (Table 2) b. SMR at 141, ¶ FF4; see also Duchin Reply Report at 2 (Table 1) c. DeFord Reply Report at 9, ¶ 25 (Table 8)
Polsby-Popper	a. 0.37 b. 0.363 c. 0.3629 d. 0.35	a. 0.36 b. 0.352 c. 0.3524 d. 0.34	a. Barber Reply Report at 8 (Table 1) b. Brunell Report at 3 (Table 2) c. SMR at 141, ¶ FF4; see also Duchin Reply Report at 2 (Table 1) d.

Snapshot of Resch. Maps	Resch. 1	Resch. 2	Source
			d. DeFord Reply Report at 9, ¶ 25 (Table 8)
Schwartz	1.6859	1.7127	SMR at 141, ¶ FF4; see also Duchin Reply Report at 2 (Table 1)
ConvHull	a. 0.8238 b. 0.81	a. 0.8161 b. 0.80	a. SMR at 141, ¶ FF4; see also Duchin Reply Report at 2 (Table 1) b. DeFord Reply Report at 9, ¶ 25 (Table 8)
PopPoly	0.7737	0.7658	SMR at 141, ¶ FF4; see also Duchin Reply Report at 2 (Table 1)
Cut Edges	a. 5090 b. 5061	a. 5237 b. 5208	a. SMR at 141, ¶ FF4; see also Duchin Reply Report at 2 (Table 1) b. DeFord Reply Report at 9, ¶ 25 (Table 8)
Retained Population of Prior Map	76.5%	76.5%	SMR at 185, ¶ FF3; see also Rodden Reply Report at 2
Number of Districts w/ Incumbents Paired	2	1	SMR at 180, ¶ FF15; SMR at 181, ¶¶ FF20-FF21; see also DeFord Reply Report at 21, ¶ 45 (Table 15)
Splits Pittsburgh (Y/N)	N	N	SMR at 52-53, ¶ FF17; SMR at 95, ¶ FF228; SMR at 151, ¶ FF18
Splits Bucks County (Y/N)	N	N	SMR at 52-53, ¶ FF17; SMR at 157, ¶ FF15

III. ARGUMENT IN SUPPORT OF SPECIAL MASTER'S REPORT

With the exception of two isolated errors—which are likely the byproduct of the expedited nature of the proceedings—the Special Master's factual findings and recommendations are supported by significant record evidence and, thus, should not be disturbed.

Similarly, the SMR also ably applies prevailing legal principles to the facts presented relative to: (1) contiguity and compactness; (2) communities of interest; (3) extra-constitutional considerations; (4) the “least change” approach advocated by the Carter Petitioners; and (5) the use of prisoner-adjusted data for redistricting. According, these facts of the SMR's analysis and recommendations should be adopted in full.

A. Inasmuch as the Special Master's factual findings are supported by record, this Court should adopt them.

As explained in *League of Women Voters*, “following . . . grant of extraordinary jurisdiction, [this Court's] standard of review is *de novo*.”

League of Women Voters v. Com., 178 A.3d 737, 801 n.62 (Pa. 2018)

(“*LWV I*”). Nevertheless, this Court has cautioned that a special master's findings of fact must be afforded “due consideration,” since “the

jurist who presided over the hearings [is] in the best position to determine the facts.” *Id.* (quoting *Annenberg v. Com.*, 757 A.2d 338, 343 (Pa. 2000)).⁶ Moreover, although the Court has noted that it *may* conduct *de novo* review, as a practical matter, it has rarely (if ever) applied such a standard. *See, e.g., Com. v. Banks*, 29 A.3d 1129, 1135 (Pa. 2011); *In re J.V.R.*, No. 81 MM 2008 (Pa. Mar. 26, 2009) (*per curiam*) (adopting and approving the special master’s recommendations); *Com. v. McGarrell*, 87 A.3d 809, 810 (Pa. 2014) (*per curiam*) (accepting the special master’s report); *In re Off. of Philadelphia Dist. Att’y*, 244 A.3d 319 (Pa. 2020) (*per curiam*) (“[T]he King’s Bench petition is hereby dismissed in accordance with the special master’s recommendation.”); *see also id.* at 326 (Dougherty, J., concurring statement) (recognizing that a special master’s factual findings are afforded “due consideration”).

In this regard, this Court’s exercise of extraordinary jurisdiction in *Banks* aptly illustrates circumstances that would warrant rejection of a special master’s proposed factual findings, as compared against the

⁶ *See generally In re Thirty-Fifth Statewide Investigating Grand Jury*, 112 A.3d 624, 633-34 (Pa. 2015) (Baer, J., concurring) (“Special masters operate as an arm of the court, investigating facts on behalf of the court and communicating with it to keep it apprised of its findings[.]”).

general rule that such proposed findings are entitled to significant deference. Specifically, in *Banks* this Court exercised jurisdiction and appointed Judge Michael T. Conohan as special master, who was instructed to submit proposed findings of fact and law. Upon receiving Judge Conohan's report, this Court rejected the report, citing his failure to offer "an autonomous judicial expression" and, thus, appointed a different jurist as special master. *Com. v. Banks*, 989 A.2d 1 (Pa. 2009) (*per curiam*). Upon receipt of the second report, this Court expressly rejected the argument that its exercise of extraordinary jurisdiction and subsequent appointment of a trial judge to act as master warranted "a *de novo* standard of review . . . which would be less deferential to the hearing judge." *Banks*, 29 A.3d at 1135. A "circumstantial anomaly" that compels the Court to assume jurisdiction, the *Banks* panel explained, "does not operate to alter the nature of a competency determination, or the respective roles of trial judges and appellate courts." Accordingly, the Court held there was "no need to depart from the settled abuse of discretion standard in reviewing [the special master]'s findings of fact and conclusions of law." *Id.*; accord *Philadelphia Dist. Att'y*, 244 A.3d at 333 (Wecht, J., concurring

statement) (“In cases predicated upon the exercise of our King’s Bench jurisdiction, we must afford ‘due consideration’ to supported factual findings, *to which we then apply a de novo standard of review.*” (emphasis added)).

Viewed in this light, the Special Master’s factual conclusions should be adopted. To begin, save for several minor oversights, her findings are supported by ample record testimony and evidence. Furthermore, insofar as she was required to weigh competing evidence and make credibility determinations, the Special Master’s assessment in this respect should not be disturbed absent showing of manifest abuse of discretion. *Accord In re Breyer’s Est.*, 37 A.2d 589, 592 (Pa. 1944) (“[F]inding of the master and the court below on this point must be accepted because supported by evidence.”). After all, as this Court has recognized, when serving as the special master, “the jurist who presided over the hearings [is] in the best position to determine the facts.” *LWVI*, 178 A.3d at 801 n.62 (quoting *Annenberg*, 757 A.2d at 343).

B. This Court should adopt in full the Special Master’s analysis of compactness and contiguity, communities of interest, partisan “fairness,” and the “least change” approach.

Although the Congressional Intervenors differ with the Special Master on several discrete points of law, as well as her ultimate recommendation that HB 2146 should be chosen instead of Reschenthaler 1 or 2, they are in full accord with her recommendations in many respects. In particular, four overarching facets of the Special Master’s proposed conclusions of law warrant emphasis.

1. The Special Master properly concluded that all of the proposed redistricting plans are sufficiently compact and contiguous.

A central tenet of this Court’s decision in *League of Women Voters* was that a congressional redistricting plan must be both compact and contiguous to pass constitutional muster. As that panel explained, these factors—alongside population equality and minimization of split political subdivisions—are neutral benchmarks that “provide a ‘floor’ of protection for an individual against the dilution of his or her vote in the creation of such districts.” *LWV I*, 178 A.3d at 817. Under the present circumstances, the Special Master correctly concluded that all of the

plans are sufficiently compact and contiguous and that they are materially indistinguishable in this respect.

Turning initially to compactness, the Special Master found that “[b]ased on the credible testimony and charts provided by Governor Wolf’s expert, Dr. Duchin, regarding the metrics used to evaluate compactness, as corroborated by various other experts in their testimony and submissions,” all of the proposed “plans and maps fulfill the constitutional requirement that a map be composed of compact territory.” SMR at 193, ¶ 22. Because this conclusion was correct as a matter of law and is supported by the record, this Court should decline any invitation to differentiate between the plans based on compactness alone. In this regard, as relayed in the Special Master’s submission to this Court, a number of the experts testified that all of the plans “fell within a fairly ‘narrow range’ of acceptable compactness scores.” *Id.* at 60, ¶ FF18 (quoting Rodden Resp. Report at 3; N.T. at 93-94); *see also* SMR, at 79, ¶ FF137. Moreover, all of the experts acknowledged that, because each of the numeric scores are designed to evaluate different

aspects of compactness, reliance on any single measurement is ill-advised. *See* SMR, at 60, ¶ FF14; *see also id.* at 70, ¶ FF79.⁷

The Special Master’s assessment of compactness is also legally sound. To begin, despite directing the General Assembly to enact a remedial congressional redistricting plan to comport with the compactness requirement, in *League of Women Voters*, this Court declined to establish a formulaic standard for compactness and, instead, delineated a range constitutionally permissible outcomes. *See* 178 A.3d at 819 (explaining that in a computer simulation that applied only the traditional redistricting criteria, the appropriate range of scores for an 18-district plan based on the 2010 census data was between .31 and .46 under the Reock measurement, and between .29 and .35 under the Polsby-Popper test).

⁷ Notably, the expert testimony in this regard is consistent with the views of a host of scholars in this field. *See, e.g.,* Micah Altman, *The Computational Complexity of Automated Redistricting: Is Automation the Answer?*, 23 Rutgers Computer & Tech. L.J. 81, 131 (1997) (noting that there are “twenty-four quantifications for the goal of ‘compactness,’ most of which will differ in the values they assign to districts”); *see also* Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness As A Procedural Safeguard Against Partisan Gerrymandering*, 9 Yale L. & Pol’y Rev. 301, 346 (1991) (discussing the strengths and weaknesses of the various compactness calculations).

This approach is also constituent with the plain language of Article II, Section 16 of the Pennsylvania Constitution, which, under *League of Women Voters*, governs the present analysis. Specifically, while that provision requires redistricting plans to avoid splitting counties and political subdivision unless “absolutely necessary,” it does not require a plan to achieve *maximum* compactness. Indeed, as Charles Buckalew relays in his oft-cited treatise on the Pennsylvania Constitution, the compactness requirement, which first appeared in the State Constitution in 1857, “admits only of approximation to exactness, but good faith alone is required for a substantial execution of the rule of the Constitution.” Charles R. Buckalew, *An Examination of the Constitution of Pennsylvania. Exhibiting The Derivation and History of Its Several Provisions*, at 53 (1883).⁸ In short, given the multitude of acceptable methods of calculating compactness, as well as the language and structure of the State Constitution, this Court should refuse to draw any material distinctions between the proposals based on compactness.

⁸ Available at https://www.google.com/books/edition/_/vOWeAQAACAAJ?hl=en&gbpv=1.

As it relates to the contiguity requirement, none of the plans were challenged on such grounds and no evidence was offered tending to show that any of the districts were non-contiguous. Accordingly, this Court should adopt The Special Master’s finding that, “[o]n their face, and as supported by the evidence of record, all the maps in the proposed plans contain districts that are comprised within a contiguous territory and comply with the contiguity’ requirement of the Pennsylvania Constitution.” SMR at 192, ¶ 16.

2. The Special Master’s factual and legal recommendations relative to communities of interest should be adopted.

This Court should adopt the Special Master’s recommendations relative to communities of interest, as they are legally and factually sound. In terms of the Special Master’s legal analysis, she correctly concluded that the communities of interest doctrine is rooted in the Free and Equal Elections Clause, as interpreted by *League of Women Voters*.

To begin, as the Special Master recognized, a common thread running through *League of Women Voters* is that, to the greatest degree practicable, a congressional redistricting plan should avoid dividing a

community with shared interests and concerns. Specifically, this Court’s decision in *League of Women Voters* repeatedly emphasized that safeguarding the interests of communities is central to a constitutional analysis of a redistricting plan;⁹ in fact, as relayed by the panel, compactness, contiguity, and respect for municipal boundaries were adopted as the as the neutral redistricting benchmarks precisely **because** “[t]hese standards place the greatest emphasis on creating representational districts that both maintain the geographical and social cohesion of the communities in which people live and conduct the majority of their day-to-day affairs[.]” *Id.* at 814; *see also Johnson v. Wisconsin Elections Com’n*, 967 N.W.2d 469, 484 (Wisc. 2021) (“[D]rawing contiguous and compact single-member districts of

⁹ *See LWVI*, 178 A.3d at 816 (“When an individual is grouped with other members of his or her community in a congressional district for purposes of voting, the commonality of the interests shared with the other voters in the community increases the ability of the individual to elect a congressional representative for the district who reflects his or her personal preferences.”). Moreover, in evaluating the historic underpinnings that lead to the development of the neutral criteria it prescribed, the Court emphasized that the Free and Equal Elections Clause, in its original form, provided that “all elections ought to be free; and that all free men having a sufficient evident common interest with, and **attachment to the community**, have a right to elect officers, or to be elected into office.” *Id.* (quoting Pa. Const. of 1776, art. I, § VII) (emphasis added); *see also id.* (“[I]t is evident that [our founders] considered maintaining the geographical contiguity of political subdivision, and barring the splitting thereof in the process of creating legislative districts”).

approximately equal population often leads to grouping large numbers of Democrats in a few districts and dispersing rural Republicans among several. These requirements tend to preserve communities of interest, but the resulting districts may not be politically competitive—at least if the competition is defined as an inter-rather than intra-party contest.”).

Accordingly, although compactness, contiguity, and respect for municipal boundaries, are undoubtedly the primary tool for evaluating the constitutionality of a redistricting plan, properly understood these principles serve to advance the Free and Equal Elections Clause’s overarching goal of protecting the interest of communities. While not susceptible to the precise mathematic measurement, this Court has recognized that the term “communities of interests” encompasses, among other things, “school districts, religious communities, ethnic communities, geographic communities which share common bonds due to locations of rivers, mountains and highways[.]” *Holt v. 2011 Legislative Reapportionment Com’n*, 38 A.3d 711, 746 (Pa. 2012) (“*Holt I*”). This concept may also refer to a community’s “circulation arteries, its common news media ... its organization and cultural ties[.]” its “common economic base[.]” and the relationship among “schools of

higher education as well as others.” *Mellow v. Mitchell*, 607 A.2d 204, 220-21 (Pa. 1992).

Applying the foregoing settled framework, the Special Master highlighted two recurring features that—based on Dr. Naughton’s detailed and un rebutted testimony—she found evince a plan’s disregard for communities of interest: (1) splitting the City of Pittsburgh, and (2) splitting Bucks County. Because the Special Master’s assessment of the communities of interest is grounded in this Court’s precedent and supported by ample record evidence, this Court should adopt her recommendations insofar as they relate to the various submissions’ attention to communities of interest; i.e., insofar as any given plan splits Pittsburgh or Bucks County, that plan should be discounted and set aside.

3. The Special Master’s assessment of partisanship in the redistricting plans should be adopted.

A central—if not overriding—theme in most of the briefing in support of the proposed maps submitted by the parties and *amici* is each plan’s partisan breakdown. Carefully examining the competing arguments, the Special Master concluded that, as a matter of law, partisan considerations in redistricting—regardless of the label

attached to them—must yield to the neutral criteria identified above (*i.e.*, equal population, compactness, contiguity, and respect for political boundaries). In this regard, given that numerous experts credibly testified that a redistricting plan principally guided by the constitutionally derived neutral factors would produce a pronounced Republican advantage in terms of likely electoral outcomes, the Special Master found that any plan which *expressly* sought to alter this natural state of affairs—namely the proposals submitted by the Gressman Petitioners, Governor Wolf, and Draw the Lines *amici*—improperly subordinated partisan considerations to the neutral benchmarks established by this Court in *League of Women Voters*. Because these conclusions are consistent with the Free and Equal Elections Clause, as interpreted by this Court in *League of Women Voters*, and supported by ample record evidence, the Special Master’s recommendations in this respect should be adopted.

In terms of the controlling legal principles, the Special Master accurately relayed this Court’s admonition that while other factors, including political considerations, may continue to play a role in the redistricting process, the Free and Equal Elections Clause requires

them 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.” *LWVI*, 178 A.3d at 817. Accordingly, the Special Master rejected the argument that the Free and Equal Elections Clause requires a redistricting plan to be fashioned in such a way that it will allow the party whose candidates, on average, garner the majority of the statewide share of the vote, to also win a majority of the congressional districts.

The Special Master’s cogent analysis in this regard should be adopted, as it is consistent with this Court’s interpretation of the Free and Equal Elections Clause, as well as its precedent in the redistricting context. In terms of the constitutional requirements, as aptly summarized in *League of Women Voters*, the Free and Equal Elections Clause prohibits “subordinat[ing] the traditional redistricting criteria in the service of partisan advantage.” 178 A.3d at 818. A plan designed to overcome a partisan *disadvantage* that exists because of neutral factors, is necessarily is “in the service of partisan advantage.” *Id.* Moreover, this Court has previously considered—and expressly rejected—

proportionality as a valid principle. Specifically, emphasizing that compactness, contiguity, and respect for political subdivisions are the paramount goals in redistricting, the *Holt* panel admonished that “[t]he constitutional reapportionment scheme does not impose a requirement of balancing the representation of the political parties; it does not protect the ‘integrity’ of any party’s political expectations.” *Holt v. 2011 Legislative Reapportionment Com’n*, 67 A.3d 1211, 1235 (Pa. 2013) (“*Holt II*”). Instead, the panel explained, “the construct speaks of the ‘integrity’ of political subdivisions, which bespeaks history and geography, not party affiliation or expectations.” *Id.*; see also *Johnson*, 967 N.W.2d at 484.

In short, the Special Master’s recommendation relative to proportionality in the context of redistricting is firmly rooted in this Court’s precedent and predicated on a robust factual record. Thus, the analysis should be adopted by this Court.

4. **Because the “least change” approach does not afford sufficient attention to the neutral criteria under the Free and Equal Elections Clause, it should be rejected.**

Consistent with the Special Master’s recommendations, this Court should also reject the “least-change” principle urged by the Carter Petitioners.

First, in *League of Women Voters*, this Court made clear that “the preservation of prior district lines” is a factor that must 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.” 178 A.3d at 817. Notwithstanding *League of Women Voters*’s clear directive, the Carter Petitioners’ expert witness and map-maker, Dr. Rodden, relayed that this consideration, which he described as the “least-change approach,” was his *central* focus in reconfiguring Pennsylvania’s congressional map. See SMR at 184, ¶¶ FF1. The fact that the Carter Petitioners’ primary motive was minimizing changes to the extant redistricting plan, rather than adherence to the neutral redistricting criteria is—without more—sufficient grounds for summarily rejecting the Carter Petitioners’ plan.

Moreover, this Court has been particularly skeptical of this approach, cautioning that “the notion that the Constitution independently, and tacitly, commands special respect for prior districting plans or incumbencies can be a mischievous one.” *Holt II*, 67 A.3d at 1234. Specifically, the Court recognized that this approach, in practice, is a thinly-veiled argument for entrenching incumbents and the existing political interests:

In the [Legislative Reapportionment Commission]’s view, upheaval or uncertainty in the electoral process must be avoided, and “historical” legislative districts should be preserved out of respect for the choices of the voting public and in the interest of efficiency. However, we are not so naïve as not to recognize that the redistricting process may also entail an attempt to arrange districts in such a way that some election outcomes are essentially predetermined for voters—“safe seats” and the like.

Id. at 1235. Notably, in reaching this conclusion, the Court also explained that *Karcher v. Daggett*, 462 U.S. 725, 740 (1983)—which the Carter Petitioners cite as authority in their brief—was wholly inapposite, noting that “the Court [in *Karcher*] was not speaking of ‘inherent’ constitutional considerations under Pennsylvania state law, or under any state constitution for that matter.” *Holt II*, 67 A.3d at 1234.

5. This Court should adopt the Special Master’s recommendation that a redistricting plan based on prisoner-adjusted data does not comport with the constitutional requirements for equal population.

The Special Master correctly concluded that a proposed redistricting plan which attempts to count incarcerated individuals at their home address rather than their prison address violates the one-person, one-vote requirement for congressional districting.

In redistricting, states must comply with the one person, one vote principle by “designing districts with total equal populations,” *Evenwel v. Abbott*, 578 U.S. 54, 71 (2016), which ensures equality of representation for equal numbers of people. *Reynolds v. Sims*, 377 U.S. 533, 560-61 (1964). Traditionally, states use census numbers as the basis for populations. *Evenwel*, 578 U.S. at 73 (noting that adopting voter-eligible population as the basis for apportionment would “upset a well-functioning approach to districting that all 50 states and countless local jurisdictions have followed for decades, even centuries”). Using census numbers for redrawing congressional districts is consistent with the fundamental understanding that elected officials represent all residents, regardless of their voter eligibility. *Id.* at 74. Relying upon

the principles articulated in *Evenwel*, the First Circuit has found that including prisoners as population in the ward where they are incarcerated does not raise a constitutional concern. *Davison v. City of Cranston*, 837 F.3d 135 (1st Cir. 2016). The First Circuit rejected the argument that inclusion of prisoners in the apportionment constituted vote dilution to those outside the district in question, emphasizing that the status quo is to base apportionment on census data. *Id.* at 144.

The *Ali amici*, who use this adjusted data set, place mistaken reliance upon Section 1302 of the Election Code for doing so. Section 1302 defines the residence of incarcerated electors for election purposes as the place where they were last registered to vote prior to incarceration. 25 Pa.C.S. § 1302. An individual's voter registration address does not necessarily correspond to the individual's residence for census purposes and thus does not warrant readjusting the data upon which the maps are drawn. College students, for example, are counted for census purposes in the places where they attend college, but may maintain a different voter registration address. Counting incarcerated individuals in their place of incarceration is consistent with the census and with the one-person, one-vote principle, and is not invalidated by

Section 1302 of the Election Code. Indeed, Pennsylvania’s consistent and traditional approach to counting incarcerated individuals where they are incarcerated for congressional redistricting is the majority view across the country.¹⁰

In light of the foregoing, Judge McCullough concluded that the Ali plan’s compliance with the one-person one-vote requirement must be assessed under the unadjusted census data used by all of the remaining parties, which resulted in a deviation of over 8,500 people. Because such a discrepancy violates the one-person, one-vote principle, Judge McCullough recommended that this Court reject the proposed redistricting plan submitted by the Ali *amici*.

As reflected in the foregoing discussion, Special Master’s analysis of this issue comports with controlling legal precepts and, thus, should be adopted.

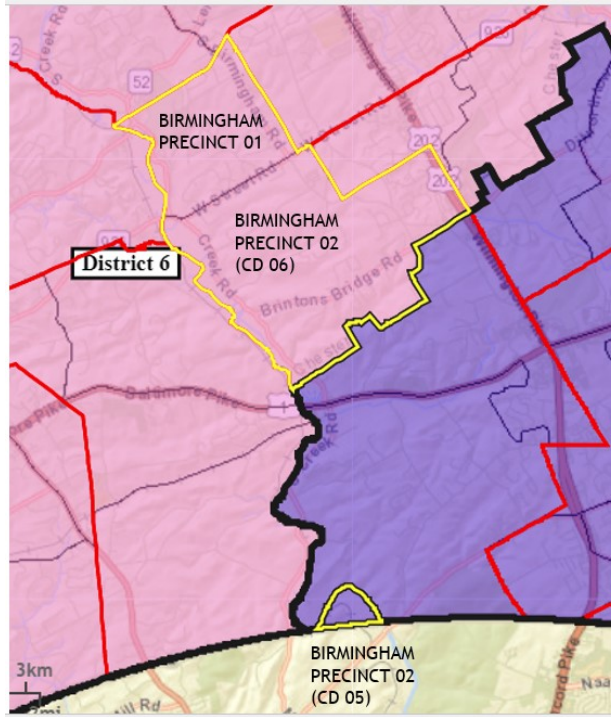
¹⁰ Washington, Nevada, California, Colorado, Virginia, Maryland, and New Jersey are the only states that adjust census data to account for prisoners in home districts in congressional districting and do so pursuant to state statute. *See* Cal. Elec. Code § 21003; Colo Rev. Stat. § 2-2-902; Md. Elec. Law § 8-701; Nev. Rev. Stat. § 360.288; N.J.S.A. 52:4-1.1 – 1.6; Va. Code Ann. § 24.2-304.04; Wash. Rev. Code § 44.05.140. *See also Davidson*, 837 F.3d at 144 (noting that the decision whether to include or exclude prisoners in apportionment “is one for the political process”).

IV. ARGUMENT IN SUPPORT OF EXCEPTIONS TO SPECIAL MASTER'S REPORT

A. The Special Masters' Report errs in concluding the Carter map has 13 county splits instead of 14 county splits.

Whether the Carter map splits 13 or 14 Counties comes down to an issue somewhat familiar to this Court, but which, under the facts now present, should generate a different finding. To explain, in adopting the 2018 Remedial Plan, this Court posted a footnote explaining that even though the Plan technically split Chester County due to a zero-population segment of Chester located within Delaware County, the Court would not consider that a split. *See League of Women Voters v. Com.*, 181 A.3d 1083,1088 n.10 (Pa. 2018) (“*LMV II*”). The proposed Carter map likewise has that same issue, specifically regarding Birmingham Township, precinct 02, which is a non-contiguous portion of that municipality bordering the state of Delaware, shown immediately below (from the Carter map, showing Birmingham in proposed districts five and six). The Carter Petitioners argued to the Special Master that this split should not be construed as a split at all, *see Carter Pet. Proposed Findings of Fact and Conclusions of Law at 30*

n.1 (Jan. 29, 2022), and the Special Master appeared to agree. *See* SMR at 143, ¶ FF7.



This proposed finding of the SMR should be rejected for at least two reasons. *First*, while this particular segment of Chester County in 2018 had no population, and thus was essentially a mere parcel of land, it now has six reported inhabitants. *See* Carter Pet. Proposed Findings of Fact and Conclusions of Law at 30 n.1. This rightly justifies now considering that small segment of population part of Chester County for “splits” purposes, since those six persons are residents of Chester County. *Second*, multiple experts construed the Carter map as having 14 county splits, including the Carter Petitioners’ *own expert* in his

reply report. *See* Rodden Reply Report at 4 (Table 2); N.T. 1/27/2022 at 166: 3-9 (Dr. Rodden discussing Table 2); *see also* DeFord Reply Report at 5 (Table 2); Duchin Reply Report at 2 (Table 1). Thus, the factual record supports finding this division to be a county “split” for purposes of this Court’s analysis.

Accordingly, the Court should find that Reschenthaler 1 and Reschenthaler 2 are the *only* maps before the Court that split just 13 counties.

B. The Special Master’s Report errs in concluding that all of the plans satisfy the equal population requirement of the United States Constitution.

The Special Master erred in concluding that all of the proposed plans satisfy the equal population requirement of the United States Constitution for at least two reasons. *First*, while the SMR correctly observes that a total population deviation of up to 10% is permissible in the context of state or local districts, the population equality requirements are far more stringent for *congressional* redistricting plans. *Second*, court-ordered congressional plan are held to an even more stringent standard. Examining the plans through the proper lens, this Court should reject the plans submitted by the House Democratic

Caucus and the Carter Petitioners without further inquiry, as they are constitutionally infirm.

To explain, in concluding that all of the redistricting proposals, with the exception of the prison-adjusted plan submitted by the Ali amici, satisfy the equal population requirement, the Special Master relied on the general principle that “[w]here the maximum population deviation between the largest and smallest district is less than 10%, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule.” *Evenwel v. Abbott*, 578 U.S. 54, 60 (2016). As *Evenwel* itself notes, however, congressional districts are judged by a different standard. *See id.* (observing that while “[s]tates must draw congressional districts with populations as close to perfect equality as possible[,] ... when drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat”); *Mahan v. Howell*, 410 U.S. 315, 321 (1973) (explaining that “more flexibility [is] constitutionally permissible with respect to state legislative reapportionment than in congressional redistricting”), *modified*, 411 U.S. 922 (1973). Specifically, Article I, Section 2 of the United States Constitution “establishes a ‘high standard of justice and common sense’

for the apportionment of congressional districts: ‘equal representation for equal numbers of people.’” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964)). Indeed, “[t]he Supreme Court has been exceedingly clear in requiring lower courts to balance population among the districts with precision.” *Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 675 (M.D. Pa. 2002) (holding 19-person total deviation violated the Federal Constitution’s one person, one vote requirement).

While courts have recognized that mathematical precision is not always achievable, the “nearly as practicable” standard require “the State make a good-faith effort to achieve precise mathematical equality.” *Karcher*, 462 U.S. at 730.

A challenge to a plan’s equal population involves two inquiries. *First*, the party challenging the redistricting plan bears the initial burden of “proving the existence of population differences that ‘could practicably be avoided.’” *Tennant v. Jefferson Cty. Com’n*, 567 U.S. 758, 760 (2012) (quoting *Karcher*, 462 U.S. at 734). Second, if this burden is met, the burden shifts to the State “to show with some specificity that the population differences were necessary to achieve some legitimate

state objective.” *Id.* To meet its burden, “the State must justify each variance, ***no matter how small.***” *Karcher*, 462 U.S. at 780 (emphasis added). Importantly, “there are no de minimis population variations, which could practicably be avoided, but nonetheless meet the standard of [Article I, Section 2] without justification.” *Id.* at 734.

Moreover, this standard—which, as the discussion above demonstrates, is quite exacting in its own right—is even more stringent when a redistricting plan is implemented by court order, rather than by legislative action. *See Abrams v. Johnson*, 521 U.S. 74, 98 (1997) (“Court-ordered districts are held to higher standards of population equality than legislative ones.”); *Navajo Nation v. Arizona Indep. Redistricting Com’n*, 230 F. Supp. 2d 998, 1009 (D. Ariz. 2002) (“A court-ordered plan is held to an even stricter *de minimis* standard of population equality than one drawn by a state legislature.”).

Against this backdrop, the Special Master erred in concluding that the plans submitted by the Carter Petitioners and the House Democratic Caucus pass constitutional muster, despite containing a two-person deviation. Although this action is not, strictly speaking, a challenge under Article I, Section 2 of the United States Constitution’s

equal population requirement, *Karcher*'s two-prong test is nevertheless instructive.

Thus, turning to the first part of the test, there is no doubt that the population difference in the Carter and House Democratic Caucus proposals “could practically be avoided[,]” 462 U.S. at 734, since ten of the thirteen maps submitted to the Special Master *did* avoid such a discrepancy. With regard to the second part of the inquiry, neither plan can credibly justify its deviation as necessary to achieve some “legitimate state objective.” As it pertains to the House Democratic Caucus’ plan, they did not even attempt to justify their failure to achieve population equality and, in fact, they were the only party that failed to offer any testimony—expert or otherwise. Similarly, the Carter Petitioners have not established that such a population deviation is necessary to advance a compelling state interest. Indeed—aside from being remarkable in that it is one of only two plans to violate the core precept of “one person one vote”—the Carter plan is remarkable in no other way. For example, it is not (and does not purport to be) the most compact, the most contiguous, or the most respectful of political subdivisions and municipalities.

Furthermore, to the extent the Carter Petitioners intend to argue that their non-compliance with Article I, Section 2 of the United States Constitution is warranted because of their “least change” approach to redistricting, that argument is unavailing. Specifically, as explained elsewhere in this Brief, maintenance of the core of a district is—at most—a secondary consideration that is wholly subordinate to the constitutionally prescribed neutral criteria. Accordingly, whatever role “the least” change rubric may have in the process, it is certainly not the type of “consistently applied legislative policies [that] might justify some variance,” *Tennant*, 567 U.S. at 761-62 (internal quotation marks omitted), since it is neither a “legislative polic[y],” nor has it been “consistently applied.” To the contrary, under *Holt*, reliance on this consideration is strictly circumscribed.

In short, a *one* person deviation is “as nearly as practicable” to equal population, and adhering to this deviation did not preclude the Carter Petitioners or the House Democrats from complying with the other constitutionally required redistricting criteria. It is manifest, therefore, that no compelling interest required the unconstitutional deviation.

C. The Special Master’s Report errs in its analysis of the interplay between Fourteenth Amendment’s prohibition against racial gerrymandering and the Voting Rights Act.

Although arguably not erroneous as such, the Special Master’s analysis of the Federal Voting Rights Act, *see* 52 U.S.C. §§ 10301, *et seq.* (the “VRA”), is incomplete in several material ways. At bottom, the question before the Special Master—and now this Court—is not whether any of the proposals comply with or violate the VRA, but rather, whether some of the plans have been constructed with an impermissible emphasis on race. As explained below, where the *Gingles* factors have not been satisfied, constructing a plan with an emphasis on race—regardless of subjective intent—risks running afoul of the United States Constitution’s prohibition against racial gerrymandering. Viewed in this light, the Special Master should have rejected the plans offered by the Governor, the Gressman Petitioners, and the Senate Democrats because the required record to complete a VRA and constitutional analysis of each is lacking (i.e., whether each plan does or does not violate the VRA and/or the Fourteenth Amendment is presently unknown, thus each should have been rejected).

1. The VRA and the Fourteenth Amendment.

As a prefatory matter, it is important to emphasize that there are two separate strands of federal law relating to racial gerrymandering. First, under Section 2 of the VRA, a state may be required to draw a majority-minority district if the three *Gingles* factors are satisfied. See *Thornburg v. Gingles*, 478 U.S. 30 (1986). Specifically, such a redistricting plan is mandatory if: “(1) [t]he minority group must be ‘sufficiently large and geographically compact to constitute a majority in a single-member district,’ (2) the minority group must be ‘politically cohesive,’ and (3) the majority must vote ‘sufficiently as a bloc to enable it ... usually to defeat the minority’s preferred candidate.’” *Bartlett v. Strickland*, 556 U.S. 1, 11 (2009) (quoting *Gingles, supra* at 50-51).

A distinct, but closely-related line of cases pertain to racial gerrymandering under the Fourteenth Amendment, which prohibits states from drawing district lines on the basis of race absent a **compelling interest**. Of course, given that compliance with federal law is presumptively “a compelling interest,” where the VRA requires creation of a majority-minority district, a claim of racial gerrymandering is unlikely to succeed. See *Abbott v. Perez*, 138 S. Ct.

2305 (2018) (“[T]he Court has assumed that compliance with the VRA is a compelling State interest for Fourteenth Amendment purposes[.]”). But where the VRA does not require creation of a majority-minority district, a State must proffer a “significant reason” for drawing district lines based on race. Therefore, if one of the *Gingles* factors, such as white bloc-voting, cannot be established, then the requisite good reason for drawing a minority-majority district does not exist. *See Gingles*, 478 U.S. at 49 n.15 (noting that “in the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters”).

2. The proposed plans of Governor Wolf, the Gressman Petitioners, and the Senate Democrats.

In this matter, Dr. Brunell’s unrebutted expert report demonstrates that there is no racially polarized voting in Philadelphia County, which forms the core of all of the districts in question. Despite the absence of racially polarized voting in Pennsylvania, Governor Wolf, the Gressman Petitioners, and the Senate Democrats have created three districts that attempt to achieve a certain racial composition.¹¹

¹¹ Congressional Intervenors do not dispute that one of the districts is, by virtue of Philadelphia’s geography and demographics, likely to be a majority-

For instance, in their submissions to the Special Master, the Senate Democrats make a passing reference to *Gingles*, see Senate Democrats’ Br. at 10, but did not even mention, let alone develop, any of the three factors. Nor did their expert’s report suggest that this analysis had been undertaken, and the expert did not offer any testimony in this respect. The Senate Democrats cited *Bartlett* (again in passing, and without pinpoint citation) in support of drawing coalition districts; however, *Bartlett* did not consider a coalition district. See *Bartlett*, 556 U.S. at 13-14 (distinguishing between “crossover districts”—where minority and majority voters vote for a minority candidate—and “coalition districts” where “two minority groups form a coalition to elect a candidate” of that coalition’s choice, and expressly stating “[w]e do not address ... coalition district[s] here”). And, even if *Bartlett* supported drawing coalition districts, the Senate Democrats would still be required to prove all three *Gingles* factors, which in the context of a coalition district requires the State to show that the minority group votes as a sufficiently cohesive unit. But they did not.

minority district based on the application of the neutral criteria outlined in *League of Women Voters*.

And that flaw casts significant doubt on the constitutionality of their proposal.

Similarly while the Governor and the Gressman Petitioners suggest that *Gingles* applies, their experts did not—and, as Dr. Brunell’s report demonstrates, *could* not—establish that the third factor is satisfied. Notably, as well, while the Governor (and to some extent, the Senate Democrats) occasionally downplay their emphasis on race in drawing the districts, the Gressman Petitioners have advocated for their map precisely *because* it is able to pack more minority groups into the three districts than any other proposal. *See* SMR at 121.

Because the Governor, the Senate Democrats, and the Gressman Petitioners did not prove *Gingles* is met, and acknowledged that their plans were drawn (at least in part) to achieve certain racial compositions in the districts, the only way to withstand a challenge under the Fourteenth Amendment would be a showing of some other “significant reason” (beyond compliance with the VRA) for drawing district lines based on race. These particular plans fail on this score as well.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the High Court concluded that a race-neutral redistricting plan, which separates voters into separate districts based predominantly on race, violates the Fourteenth Amendment when “that separation lacks sufficient justification.” *Id.* at 650. While the Court acknowledged that racial gerrymandering cases might be difficult to prove, but noted in “some exceptional cases, a reapportionment plan may be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to segregate voters on the basis of race[,]” the *Shaw* court offered a scenario where “a State concentrated a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions.” *Id.* at 646; *see also id.* (these objective factors are important because “they may serve to defeat a claim that a district has been gerrymandered on racial lines”). As aptly relayed by the Court, grouping together individuals who share a common race, but no other commonality—geography, political boundaries, etc.—“reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike,

share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial stereotypes.” *Id.* These concerns are even more pounced where the plans at issue have prioritized the amalgamation of different races simply because they are not white.

To summarize, whether the plans discussed above actually violate Federal law is unclear and that question is not properly before the Court. Indeed, absent discovery and access to the mapmakers and the process utilized for creating the plans proposed by these parties, it would be nearly impossible to definitively make an assessment on this point at this juncture. What is clear, however, is that these plans, if adopted, will face questions that may result in their invalidation in Federal Court. Regardless, they should have been rejected by the Special Master due to the incomplete record.

D. The Special Master’s Report errs in the interpretation of the prohibition against splits of counties and municipalities unless “absolutely necessary.”

In evaluating the various plans, the Special Master did not accord sufficient legal weight to the prohibition against splitting municipalities and municipalities unless “absolutely necessary.” Specifically, although

the Special Master recognized that the prohibition against splitting counties and municipalities is one of the core neutral benchmarks under *League of Women Voters*, the SMR’s analysis in this regard was flawed in two important ways: *first*, it misinterpreted this directive as simply one of the factors that is weighted in the analysis; and *second*, it mistakenly placed wards on the same footing as counties and other political subdivisions. As explained below, the text, structure, and history of the State Constitution suggest that minimizing county and municipal splits is a paramount objective that is second only to the equal population requirement. Furthermore, consistent with the rules of textual interpretation, Article II, Section 16’s reference to “wards” should be given less weight.

1. Article II, Section 16.

As the Special Master recognized, in *League of Women Voters* this Court held that the neutral criteria articulated in Article II, Section 16 of the State Constitution properly governed its assessment of congressional redistricting plans. The full text of that provision is as follows:

The 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 (emphasis added). Explaining that this provision is deeply rooted in the Commonwealth’s constitutional history and is an outgrowth of the various efforts aimed at preventing voter dilution, the Court incorporated its three core requirements: (1) compactness; (2) contiguity; and (3) the prohibition against splitting political subdivisions “[u]nless absolutely necessary.” While the phrase “absolutely necessary” was not further developed in *League of Women Voters*, the debates of the 1968 Pennsylvania Constitutional Convention, as well as the interpretation of the United States Constitution, suggest that strict emphasis on keeping counties and political subdivisions whole is a central part of our organic law.

To illuminate, from the inception of the 1968 Convention, the delegates plainly regarded the maintenance of political boundaries as an overriding concern. Indeed, on the opening day, when the question of

implementing certain guidelines in the legislative reapportionment process was first raised, Mr. Stahl offered the following remarks:

The maintenance of political subdivision boundary lines is the principal non-population factor sanctioned by the courts. This can be accomplished by separate representation for local government units, or by preventing the splitting up of political subdivisions in the formation of legislative districts. The Supreme Court has recognized that the establishment of legislative districts along political subdivision lines may also serve to deter gerrymandering.

Debates of the Convention to Amend the Constitution of Pennsylvania, Vol. I at 32 (1967).

And the best evidence that the word “absolutely” was intended to elevate this requirement is found in the procedural history of the particular phrase. Specifically, after extensive debate—and before a final vote—an amendment regard it was referred to the Convention’s Committee on Style and Drafting. With the input of the Substantive Committee on Redistricting, the Chairman of the Committee on Style and Drafting specifically stated “[t]he Committee acquiesces in the substantive committee’s insistence upon the inclusion of the adverb ‘absolutely[,]’” *Debates of the Convention to Amend the Constitution of Pennsylvania*, Vol. II at 1161 (1968). Thus, in addition to the settled maxim that every word in the Constitution must be given effect, the

“substantive committee’s instance upon” the included adverb suggests an intent by the framers of the present version of our Constitution to create organic law that is more forceful than one where the word “necessary” stands alone.

Furthermore, a case that is familiar to every first-year law student also confirms the heightened emphasis that should be placed on “absolutely necessary.” Specifically, examining the meaning of the word “necessary” as used in the Necessary and Proper Clause, the U.S. Supreme Court explained that the word “standing by itself, has no inflexible meaning; it is used in a sense more or less strict, according to the subject.” *M’Culloch v. State*, 17 U.S. 316, 388 (1819). The Court further observed, however, that this word “may be qualified by the addition of adverbs of diminution or enlargement, such as very, indispensably, more, less, or absolutely necessary[.]” *Id.* In this regard, the Court pointed to Article I, Section 10, which “prohibits a state from laying ‘imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws[.]” U.S. Const. art I, § 10. While the Necessary and Proper Clause granted flexibility, Justice Marshall explained, Article I, Section 10’s prohibition was

decidedly more stringent, since “the convention understood itself to change materially the meaning of the word ‘necessary,’ by prefixing the word ‘absolutely.’” *M’Culloch*, 17 U.S. at 414-15.

The foregoing leads to the inescapable conclusion that the prohibition against dividing counties and municipalities requires particularly close attention when redistricting under Pennsylvania law. The question, then, is what constitutes absolute necessity? The only logical conclusion is that such a division is appropriate where it is absolutely necessary to comply with another clear constitutional directive. Accordingly, in the present context, this directive can be read as mandating a strict regard for county and municipal boundaries, unless splitting them is necessary to comply with the equal population requirement.

2. Wards.

Because the nature of “wards” has changed drastically over the last century, the Special Master erred in placing equal legal weight on ward divisions. Specifically, at the time this constitutional provision was adopted, wards were an essential municipal unit within boroughs and cities of the Second and Third Class. Among other things, each

ward elected its own officers, such justice of the peace, aldermen,¹² assessors,¹³ and auditors. Moreover, given that municipal legislative bodies had not yet been made subject to equal population requirements, members of borough council were elected by ward. Wards, therefore, were integral to the municipal structure.

Over time, however, that began to change, beginning with the abolition of aldermen and justices of the peace.¹⁴ Furthermore, as the population distribution among wards continued to become more

¹² Pa. Const. of 1874, art. V, § 11 provided:

Except as otherwise provided in this Constitution, justices of the peace or aldermen shall be elected in the several wards, districts, boroughs and townships, at the time of the election of constables, by the qualified electors thereof, in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of five years. No township, ward, district, or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such township, ward, or borough; no person shall be elected to such office unless he shall have resided within the township, borough, ward or district for one year next preceding his election. In cities containing over fifty thousand inhabitants, not more than one alderman shall be elected in each ward or district.

¹³ See, e.g., 72 P.S. §§ 5020-102 (defining the role of assessors); 72 P.S. § 5020-301 (“The qualified voters of each ward in cities of the third class shall, at the municipal election in the year one thousand nine hundred and thirty five, and every four years thereafter, vote for and elect a properly qualified person, according to law, to act as county assessor in each of said wards under the provisions of this act, who shall serve for four years.”), *repealed by* 53 Pa.C.S. § 8801 *et seq.*

¹⁴ See Pa. Const. Sched. art. V, § 12 (abolishing office of alderman and justice of the peace).

lopsided and the application of one-person-one-vote principles to local reapportionment was firmly established, boroughs and cities also ceased elected council members by ward and, instead, either shifted to at-large representation, or decennial districting. At present, one of the only function wards serve is in the election administration process.¹⁵ Thus putting splits of wards on equal footing as splits of counties and municipalities in assessing redistricting plans is unjustified.

E. The Special Master erred in recommending HB 2146 over Reschenthaler 1 or 2.

In the end, this case comes down to “absolutely necessary.” Here, the *only* maps before the Court that have split counties and municipalities the least number of times (13 and 16 respectively)—i.e., only as absolutely necessary—are Reschenthaler 1 and Reschenthaler 2. Multiple experts (Dr. Rodden, Dr. DeFord, and Dr. Duchin), none of whom were experts for the Congressional Intervenors, testified that it was absolutely possible to draw a 17-district congressional map that contained only 13 county splits and 16 municipal splits, just as the

¹⁵ The only remnant of the old regime of ward officers appear to be constables. See 44 Pa.C.S. § 7113(b) (“The qualified voters of every borough divided into wards shall vote for and elect a properly qualified person for constable in each ward and a properly constable for high constable in the borough.”).

Congressional Intervenors have done. *See* SMR at 147, ¶¶ FF42-FF43; *see also* N.T. 1/27/22 at 43:19-25; 170:15-20 (Dr. Rodden); N.T. 1/27/22 at 287:11-20 (Dr. DeFord); N.T. 1/27/22 at 461:5-21 (Dr. Duchin). Here's what that means: a congressional plan for Pennsylvania **cannot** contain more than 13 county splits or 16 municipal splits because multiple experts admitted splitting more than that was not absolutely necessary to achieve constitutional compliance.

That should be the end of the inquiry for this Court. The Congressional Intervenors are the only participants in this proceeding who *to the letter* followed the Pennsylvania Constitution. While others submitted maps that have this or that feature purporting to be better in some one way or other, those maps all fail for the same reason: they split more counties and municipalities than is “absolutely necessary.” Thus, comparing their various metrics to those of the Congressional Intervenors’ maps is a comparison of apples to oranges: none of them presented testimony, and thus it is utterly unknown, how they would have fared in these metrics had they followed the Constitution.

N.T. 1/27/22 at 465:16-25 (Dr. Duchin testifying).¹⁶ Even if the Court could consider maps with higher numbers of splits, consideration of all neutral factors compels selecting one of the Reschenthaler maps: they are top of the class in compactness scores, share the least amount of municipal splits and segments, and of course stand alone with fewest county splits and segments. No other map checks as many of the neutral factor boxes as the Reschenthaler maps. Accordingly, the other parties' stats, and the maps themselves, should be summarily ignored.

Finally, various experts reported a variety of purported partisan measures about each of the *submitted* maps, but the most resounding detail was about ones *not* submitted. Indeed, Dr. Duchin—the Governor's expert—disclosed to the Court that in generating **100,000** random plans (i.e., maps) with a computer, which was programmed only to honor Pennsylvania's minimum constitutional requirements, the “[r]andom plans tend to exhibit **pronounced advantage** to

¹⁶ Q. So your representation to the Court is if these maps changed or produced fewer county splits, the scores don't change?

A. They might remain unchanged.

Q. They might remain unchanged, but they might change?

A. But they might change.

Q. Indeed.

A. I agree.

N.T. 1/27/22 at 465:16-25.

Republicans across this full suite of elections.” *See* Duchin Initial Report at 18 (emphasis added); SMR at 164, ¶ FF10. And that wasn’t a typo; indeed, on the next page of her report, still analyzing the 100,000 plans drawn by a non-partisan, non-biased computer, she once again concluded that “random plans favor Republicans[.]” Duchin Initial Report at 19. Further, far from backing away from this analysis, at trial she agreed that these 100,000 plans produced a “pronounced advantage to Republicans.” N.T. 1/27/22 at 449:1-12.¹⁷

In other words, the most “typical outcome” for any randomly drawn, constitutionally compliant plan, which takes no account for impermissible partisan considerations, is one that will produce a Republican “tilt” based on election projections. N.T. 1/27/22 at 450:10-10-16 (Dr. Duchin testifying).¹⁸ And the *reason* for that typical outcome is not anything nefarious but, in fact, something readily acknowledged

¹⁷ Q. Now, as I understand what you’re saying is that you agree that the random plans that are drawn in your ensemble without any partisan data, Exhibit A, pronounced advantage to Republicans. Correct?

A. That’s a qualitative assessment, but I would call this pronounced.

Q. You would call it pronounced?

A. I would.

N.T. 1/27/22 at 449:1-12 (testimony of Dr. Duchin).

¹⁸ Q. But the most typical outcome is plans with a Republican tilt. Fair?

A. Absolutely. And I’m not aware of any rule that requires that we pick the most typical. I think we’re trying to choose an excellent plan.

N.T. 1/27/22 at 450:10-10-16 (testimony of Dr. Duchin).

at trial: Pennsylvania’s human geography (sometimes referred to as political geography) results in its citizens living in population-dense urban areas, which are more Democrat, and also in population-dispersed rural areas, which are more Republican. *See* SMR at 162-164, ¶¶ FF1-FF10; *see also* N.T. 1/27/22 at 174:3-181:24 (Dr. Rodden testifying);); Duchin Initial Report at 17 (“In this section, I present a series of images that reinforce the theme elaborated above: the political geography of Pennsylvania creates a districting landscape that is tilted toward Republican advantage.”)¹⁹ Thus, in drawing population-equal districts, yet still compact and contiguous, those voters become grouped into divisions that, solely as a function of how people have self-sorted, tend to have a Republican lean. *See* SMR at 162-164, ¶¶ FF1-FF10; *see also* N.T. 1/27/22 at 181:9-20 (Dr. Rodden testifying).

¹⁹ The most poignant admission by Dr. Rodden of the phenomenon of Pennsylvania’s human geography yielding a Republican tilt in maps was as follows:

Q. I really just want to get to the terminal statement of this --- this report. Proving such intent in court will be difficult in states where equally egregious electoral bias can emerge purely from human geography? Did I read that correctly?

A. Yes.

Q. And is that --- was that true when you said it?

A. Yes.

Q. And is it still true today about Pennsylvania?

A. Yes.

N.T. 1/27/22 at 181:6-20.

And the foregoing most “typical outcome” is precisely reflected in Reschenthaler 1 and Reschenthaler 2. According to various experts in this case, these two maps produce a slight Republican tilt. *See supra*. This is utterly consistent with Pennsylvania’s political geography.

In the end, for these reasons, and for the reasons stated above, the Court’s choice in this matter is binary: pick either Reschenthaler 1 or Reschenthaler 2. All of the other proposed maps fail, in among other ways, the unequivocal constitutional requirement that they split counties and political subdivisions only when “absolutely necessary.” All of the parties submitting these maps could have done better—as multiple experts acknowledged—but they elected not to, for reasons unknown. Their failing winnows the wheat from the chaff, leaving only two maps that have met the constitutional requirements to be selected as Pennsylvania’s congressional plan. Accordingly, the Congressional Intervenors respectfully submit the Special Master erred in not recommending one of the Reschenthaler maps.

V. CONCLUSION

For the foregoing reasons, Reschenthaler 1 and Reschenthaler 2 are the only maps that meet *all of* the constitutional requirements for a

congressional district map. They should therefore be adopted by this Court.

Respectfully submitted,

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