

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 464 M.D. 2021

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 Bachunis; Tom DeWall; Stephanie McNulty; and Janet Temin,

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

No. 465 M.D. 2021

Philip T. Gressman; Ron Y. Donagi; Kristopher R. Tapp; Pamela A. Gorkin; David P. Marsh; James L. Rosenberger; Amy Myers; Eugene Boman; Gary Gordon; Liz McMahan; Timothy G. Feeman; and Garth Isaak

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

**APPLICATION FOR LEAVE TO INTERVENE BY BRYAN CUTLER,
SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES;
KERRY BENNINGHOFF, MAJORITY LEADER OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES; JAKE CORMAN,
PRESIDENT PRO TEMPORE OF THE PENNSYLVANIA SENATE; AND
KIM WARD, MAJORITY LEADER OF THE PENNSYLVANIA SENATE**

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** Pro Hac Vice application forthcoming*

*Counsel for Proposed-Intervenors Bryan
Cutler, Speaker of the Pennsylvania
House of Representatives, and Kerry
Benninghoff, Majority Leader of the
Pennsylvania House of Representatives*

Pursuant to Pennsylvania Rules of Appellate Procedure 106 and 1531(b) and Pennsylvania Rules of Civil Procedure 2326 through 2329, Bryan Cutler, Speaker of the Pennsylvania House of Representatives (“Speaker Cutler”); Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives (“Leader Benninghoff” and, together with Speaker Cutler, the “House Leaders”); Jake Corman, President *Pro Tempore* of the Pennsylvania Senate (“President Corman”); and Kim Ward, Majority Leader of the Pennsylvania Senate (“Leader Ward” and, together with President Corman, the “Senate Leaders,” and, together with the House Leaders, the “Proposed Intervenors”) hereby respectfully apply for leave to intervene in the above-captioned matters filed by Carol Ann Carter, *et al.* (“Carter Petitioners”) and Philip T. Gressman, *et at.* (“Gressman Petitioners”) (collectively, “Petitioners”).

In support of this Application, the Proposed Intervenors respectfully state as follows:

1. Proposed Intervenors are the highest-ranking officers and majority leaders of the Pennsylvania House of Representatives and Pennsylvania Senate, respectively, and have been authorized by the majority, Republican caucuses of their respective bodies to intervene in redistricting matters to protect legislative interests. Pursuant to Article I, Section 4 of the United States Constitution, the General Assembly has been assigned the authority to set the “Times, Places, and

Manner” of elections to Congress—including the authority to perform congressional redistricting.

2. Petitioners, in their Petitions for Review (their “Petitions”), ask this Court to dilute, abrogate, impair, or abolish the prerogative of the General Assembly—led by the Proposed Intervenors—to enact a congressional redistricting plan for the 2022 elections and beyond. Proposed Intervenors are entitled to intervene under Pa.R.C.P. 2327(3) and (4) to vindicate their enforceable interest to perform redistricting for the Commonwealth, an exclusively legislative function that the U.S. and Pennsylvania Constitutions assign to the General Assembly.

3. Previously, this Court granted Proposed Intervenors’ request to intervene in a similar lawsuit that the Carter Petitioners filed in April 2021, a lawsuit in which those petitioners sought the same relief that they are seeking here. *See Carter v. Degraffenreid*, Dkt. No. 132 M.D. 2021. The Court dismissed that case on October 8, 2021. Proposed Intervenors’ interests have not changed and, as with the prior lawsuit, they are entitled to intervene in these matters.

4. A memorandum of law in support of this application is being filed contemporaneously herewith and is incorporated by reference.

5. Proposed Intervenors’ proposed Answers to the Petitions are attached as **Exhibits “A” and “B,”** respectively, and incorporated by reference.

6. A proposed order granting this application is attached as **Exhibit “C.”**

7. Verifications, affirming the truth of the factual averments set forth in this application, are attached as **Exhibit “D.”**

WHEREFORE, the Proposed Intervenors respectfully request that the Court grant their Application for Leave to Intervene and allow them to intervene as Respondents in these actions.

Dated: December 27, 2021

/s/ Anthony R. Holtzman

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Respectfully submitted,

/s/ Jeffrey Duffy

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CERTIFICATION OF COMPLIANCE

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

/s/ Anthony R. Holtzman
Anthony R. Holtzman

Exhibit A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 464 MD 2021

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,

vs.

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ANSWER WITH NEW MATTER

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Counsel for Legislative Intervenors Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives

Pursuant to Pennsylvania Rules of Appellate Procedure 1516(b) and 1517, Bryan Cutler, Speaker of the Pennsylvania House of Representatives (“Speaker Cutler”); Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives (“Leader Benninghoff” and, together with Speaker Cutler, the “House Leaders”); Jake Corman, President *Pro Tempore* of the Pennsylvania Senate (“President Corman”); and Kim Ward, Majority Leader of the Pennsylvania Senate (“Leader Ward” and, together with President Corman, the “Senate Leaders,” and, together with the House Leaders, the “Legislative Intervenors”) hereby answer Petitioners’ Petition for Review (“Petition”) as follows. The numbered paragraphs of the Answer correspond to the numbered paragraphs of the Petition.

1. Paragraph 1 contains Petitioners’ characterization of their action and/or legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 1. Legislative Intervenors deny that Petitioners are entitled to the relief they seek.

2. Legislative Intervenors admit that the U.S. Secretary of Commerce delivered the Census data in August 2020 and that Pennsylvania will be allocated 17 Members in Congress in the next decennium. The remainder of paragraph 2 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in the remainder of paragraph 2.

3. Paragraph 3 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 3.

4. Legislative Intervenors deny that it is clear that Pennsylvania's political branches will not timely act to pass a congressional redistricting plan and that the judiciary is required to step in. By way of further answer, there is still time for the General Assembly to pass a plan that the Governor will sign for the 2022 election cycle. The remainder of paragraph 4 contains legal conclusions to which no response is required, and the facts and circumstances of the lawsuit in *League of Women Voters v. Commonwealth* ("LWV P"), 178 A.3d 737 (Pa. 2018), are laid out in that opinion, which speaks for itself. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in the remainder of paragraph 4.

5. Legislative Intervenors admit that the Pennsylvania General Assembly and the Governor have not yet reached an agreement on a congressional redistricting plan, but deny the remaining allegations in paragraph 5. Further answering, Legislative Intervenors deny that the General Assembly and the Governor do not agree on the basic criteria that a congressional redistricting plan must meet, as those criteria are set forth under federal and state law.

6. Legislative Intervenors admit that the Senate has recessed and the House has adjourned for the remainder of 2021 and that the General Assembly has not passed a congressional redistricting plan. Legislative Intervenors deny the remaining allegations in paragraph 6. Legislative Intervenors further answer that there is still time for the General Assembly to pass a plan. While Legislative Intervenors admit that the Department of State previously indicated that a plan needed to be enacted by the end of 2021 in order for the 2022 elections to proceed timely, after reasonable investigation, Legislative Intervenors are without knowledge or information sufficient to form a belief regarding the basis and truth of those statements and same are therefore denied.

7. The facts and circumstances of *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992) and *League of Women Voters of Pa. v. Commonwealth (“LWV II”)*, 181 A.3d 1083 (Pa. 2018) are laid out in those opinions, which speak for themselves. Legislative Intervenors deny that this Court needs to intervene at this time to protect Petitioners’ constitutional rights, as there is still time for a plan to be passed. By way of further answer, the Petition’s request for the Court to usurp the enactment process, if granted, would violate the General Assembly’s authority to conduct congressional redistricting under Article I, Section 4 of the United States Constitution.

8. Admitted.

9. After reasonable investigation, Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9 and therefore deny them.

10. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of paragraph 10 and therefore deny them. The remainder of paragraph 10 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in the remainder of paragraph 10.

11. Admitted.

12. Admitted.

13. Admitted.

14. Paragraph 14 contains legal conclusions to which no response is required, and the opinion in *LWV I* speaks for itself. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 14.

15. Legislative Intervenors admit that the General Assembly was unable to enact a new map following the decision in *LWV I*, because it was given inadequate time to do so.

16. After reasonable investigation, Legislative Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 16 and therefore deny them.

17. Admitted.

18. Admitted.

19. Admitted. By way of further answer, the release of the Census data was delayed, and the full data set that is needed for redistricting was not received until August 2021.

20. Admitted.

21. Admitted that the 2020 Census report indicates that Pennsylvania's resident population is 13,002,700 and that, based on the 2010 Census, the prior resident population was 12,702,379. Legislative Intervenors deny that this increase is "significant."

22. Admitted.

23. Admitted.

24. Admitted.

25. Denied. By way of further answer, based upon 2020 Census results, the ideal population for each of Pennsylvania's congressional districts under a 17-seat allocation is 764,865, which is 59,177 more persons per district than under the current plan.

26. Admitted.

27. Admitted.

28. Legislative Intervenors admit only that, in light of the 2020 Census data, Congressional Districts 8, 9, 12, 13, 14, 15, 16, and 18 have less population than the ideal district and Congressional Districts 1, 2, 3, 4, 5, 6, 7, 10, 11, and 17 have more population than the ideal district. Legislative Intervenors deny that the districts are “significantly” underpopulated or overpopulated.

29. Paragraph 29 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 29.

30. Paragraph 30 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 30.

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted.

35. Paragraph 35 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 35. Legislative Intervenors further

answer that there is still time for the General Assembly and the Governor to reach agreement on a plan.

36. Paragraph 36 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 36.

37. Legislative Intervenors admit that the P.L. 94-171 data was released in August 2021 and that the General Assembly and Governor have not yet enacted a congressional redistricting plan. Further answering, Legislative Intervenors state that the process of drawing and reviewing proposed maps, and reaching agreement, generally takes months and, in this instance, this process was shortened due to the delays with the Census data.

38. After reasonable investigation, Legislative Intervenors are without knowledge or information sufficient to form a belief about which criteria the Governor would consider in determining whether to approve a proposed map from the General Assembly. Legislative Intervenors further state that federal law and Pennsylvania law establish the criteria that a congressional map must meet.

39. Denied. Legislative Intervenors deny that the plan approved by the House State Government Committee fails to comply with the criteria that are set forth in *LWW I*. After reasonable investigation, Legislative Intervenors are without knowledge or information sufficient to form a belief as to which criteria the

Governor believes are required other than the criteria set forth under Pennsylvania law and federal law, and whether the plan proposed by the House State Government Committee fails to meet those criteria.

40. Denied. Legislative Intervenors deny that the House State Government Committee's proposed congressional redistricting plan contains irregularly shaped districts, that it unnecessarily splits communities of interest, or that it cracks any minority communities.

41. Admitted that the Senate has recessed and the House as adjourned for the rest of 2021. Legislative Intervenors deny that the General Assembly has jeopardized the ability to conduct timely elections in 2022, because there is still ample time to pass a new congressional redistricting plan.

42. Legislative Intervenors admit the existence of the statements that are contained in the Brief in Support of Preliminary Objections that the State Respondents filed in *Carter v. Degraffenreid*, No. 132 MD 2021 (Sept. 16, 2021), but, after reasonable investigation, they are without knowledge or information sufficient to form a belief as to the truth of those statements.

43. Legislative Intervenors admit that a new congressional redistricting map is unlikely to be enacted in 2021, but deny that this factor will jeopardize Pennsylvania's ability to conduct timely elections in 2022, as there is still time for a map to be passed. By way of further answer, Legislative Intervenors state that

primary election-related deadlines can be extended in Congressional elections, and in the past have been extended.

44. After reasonable investigation, Legislative Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 44 and therefore deny them.

45. Admitted. Further answering, Legislative Intervenors state that such deadlines can be extended for Congressional elections, and in the past have been extended.

46. Denied. Further answering, Legislative Intervenors state that such deadlines can be extended for Congressional elections, and in the past have been extended.

47. The facts and circumstances of *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992) and *LWV II* are laid out in those opinions and speak for themselves. Legislative Intervenors deny any characterization of those opinions.

48. Denied. Legislative Intervenors deny that there is an impasse or stalemate or that this Court needs to intervene at this time.

COUNT I

49. Legislative Intervenors incorporate their responses to paragraphs 1-48 of the Petition as if fully restated herein.

50. Paragraph 50 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 50. Further answering, Legislative Intervenors state that the Pennsylvania Constitution's Free and Equal Elections Clause and the interpretation given to it in *LWV I* speak for themselves.

51. Paragraph 51 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 51. Further answering, Legislative Intervenors state that the Free and Equal Elections Clause in the Pennsylvania Constitution and the opinion in *LWV I* speak for themselves.

52. Paragraph 52 contains legal conclusions to which no response is required and the opinion in *LWV I* speaks for itself. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 52.

53. Legislative Intervenors admit that, in view of the 2020 Census data, Pennsylvania's current congressional district plan would be malapportioned. After reasonable investigation, Legislative Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 53 and therefore deny them.

54. Paragraph 54 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 54.

COUNT II

55. Legislative Intervenors incorporate their responses to paragraphs 1-54 of the Petition as if fully restated herein.

56. Paragraph 56 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 56.

57. Paragraph 57 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 57.

58. Legislative Intervenors admit that, in view of the 2020 Census data, Pennsylvania's current congressional district plan would be malapportioned.

59. Paragraph 59 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 59.

COUNT III

60. Legislative Intervenors incorporate their responses to paragraphs 1-59 of the Petition as if fully restated herein.

61. Admitted.

62. Legislative Intervenors admit that Pennsylvania is currently allotted 18 Members to Congress but that, in light of the 2020 Census, it will only be allotted 17 Members to Congress. The remaining allegations in paragraph 62 are legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the remaining allegations in paragraph 62.

63. Paragraph 63 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 63.

64. Legislative Intervenors deny each and every factual allegation in the Petition not expressly admitted herein as true.

NEW MATTER¹

FIRST AFFIRMATIVE DEFENSE

65. One or more counts of the Petition fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

66. Petitioners failed to join necessary or indispensable parties.

¹ Legislative Intervenors reserve the right to assert additional affirmative defenses that may arise during the course of this matter.

THIRD AFFIRMATIVE DEFENSE

67. Petitioners lack standing.

FOURTH AFFIRMATIVE DEFENSE

68. Petitioners' claims are not ripe.

FIFTH AFFIRMATIVE DEFENSE

69. The claims asserted in the Petition are non-justiciable.

NOTICE TO PLEAD

Petitioners are notified to plead to this Answer and New Matter within 30 days from service or a judgment may be entered against them.

WHEREFORE, Legislative Intervenors respectfully request that the Court dismiss the Petition for Review in its entirety and grant such other and further relief to them as the Court deems just and proper.

Dated:

/s/ Anthony R. Holtzman

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Respectfully submitted,

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VERIFICATION

I, _____ hereby verify that the factual averments and denials of factual averments made in the foregoing Answer with New Matter are true and correct to the best of my knowledge and information or belief. I make this verification subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: _____

Exhibit B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 465 MD 2021

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1. Paragraph 1 contains Petitioners’ characterization of their action and/or legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 1. After reasonable investigation, Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations that Petitioners are registered voters and leading mathematicians and scientists and therefore deny those allegations. Legislative Intervenors deny that Petitioners are entitled to the relief they seek.

2. Legislative Intervenors admit that Pennsylvania’s congressional map was last drawn in 2018, that, since that time, Pennsylvania has lost a congressional

seat, and that a new map is needed for the 2022 election cycle. Legislative Intervenor further admit that, in view of the 2020 Census results, the current congressional district map is malapportioned. After reasonable investigation, Legislative Intervenor are without knowledge or information sufficient to form a belief about the allegations that unidentified candidates do not know where to run and unidentified voters cannot identify or evaluate their candidates and therefore deny those allegations. Legislative Intervenor deny the remainder of paragraph 2. Legislative Intervenor further answer that there is still time for the General Assembly to pass a congressional redistricting plan.

3. The Free and Fair Elections Clause, the Petition Clause, the equal-protection guarantees of the Pennsylvania Constitution, and the facts and circumstances of *League of Women Voters of Pa. v. Commonwealth* (“LWVI”), 178 A.3d 737 (2018) speak for themselves. Legislative Intervenor deny any characterization of these legal authorities. The remainder of paragraph 3 of the contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenor deny the allegations in the remainder of paragraph 3.

4. Denied that, on December 15, 2021, the General Assembly adjourned. By way of further answer, on that date, the Pennsylvania Senate recessed until January 4, 2021 or the call of the President Pro Tempore. Further denied that the

congressional district plan did not receive first consideration in the House. The remaining allegations in this paragraph are admitted.

5. Admitted that the current schedule allows for the period for collecting nominating petitions to begin on February 15, 2022.

6. Legislative Intervenors admit that the Acting Secretary of the Commonwealth and the Director of the Bureau of Election Services and Notaries made the representations regarding the deadlines to pass a new congressional district map. After reasonable investigation, Legislative Intervenors are without knowledge or information sufficient to form a belief regarding the truth or accuracy of those representations.

7. Denied. By way of further answer, because there is still time for a new congressional redistricting plan to be passed, Legislative Intervenors deny that there is no realistic prospect that such a plan will be adopted by January 24, 2022 and that this Court needs to intervene at this time to protect Petitioners' constitutional rights. Moreover, if the Court took this step, it would usurp the General Assembly's authority to conduct congressional redistricting under Article I, Section 4 of the United States Constitution. Legislative Intervenors further state that the Free and Equal Elections Clause, the Petition Clause, and the equal-protection guarantees of the Pennsylvania Constitution speak for themselves. Legislative Intervenors deny any characterization of these legal authorities.

8. Legislative Intervenors deny that this Court needs to intervene at this time to protect Petitioners' constitutional rights, as there is still time for a plan to be passed. Further answering, Legislative Intervenors state that Petitioners' Application for the Exercise of King's Bench Power or Extraordinary Jurisdiction speaks for itself. Legislative Intervenors deny any characterization of that filing.

9. Admitted.

10. Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. After reasonable investigation, Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 10 and therefore deny them.

11. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 11 and therefore deny them.

12. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient

to form a belief about the truth of the remaining allegations in paragraph 12 and therefore deny them.

13. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 13 and therefore deny them.

14. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 14 and therefore deny them.

15. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 15 and therefore deny them.

16. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient

to form a belief about the truth of the remaining allegations in paragraph 16 and therefore deny them.

17. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 17 and therefore deny them.

18. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 18 and therefore deny them.

19. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 19 and therefore deny them.

20. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient

to form a belief about the truth of the remaining allegations in paragraph 20 and therefore deny them.

21. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 21 and therefore deny them.

22. After reasonable investigation, Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 22 and therefore deny them.

23. Admitted.

24. Admitted.

25. Admitted that Pennsylvania's current congressional district map was adopted in 2018. The remainder of paragraph 25 contains legal conclusions to which no response is required, and the facts and circumstances in *League of Women Voters of Pa. v. Commonwealth* ("LWV II"), 181 A.3d 1083 (2018) are reflected in that opinion, which speaks for itself. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in the remainder of paragraph 25.

26. Admitted.

27. Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation that “[b]ased on the 2020 Census Data, Pennsylvania’s congressional districts vary in population by as much as 95,000 residents” and therefore deny it. The remaining allegations in this paragraph are admitted.

28. Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional district plan is malapportioned. Legislative Intervenors deny that all districts are “significantly” malapportioned. After reasonable investigation, Legislative Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 28 and therefore deny them.

29. Respondents’ July 1, 2021 filing speaks for itself. Legislative Intervenors deny any characterization of that filing. Further answering, Legislative Intervenors state that there is still time for the General Assembly to pass a plan.

30. Legislative Respondents admit that, under the current schedule, on February 15, 2022, nominating petitions can begin to be circulated and that, on March 8, 2022, they are due. Further answering, Legislative Intervenors state that such deadlines can be extended for Congressional elections, and in the past have been extended. After reasonable investigation, Legislative Intervenors lack

knowledge or information sufficient to form a belief about the allegation regarding what Respondents' deadlines were tethered to and therefore deny it.

31. Legislative Intervenors admit that the Senate recessed and the House adjourned its legislative session on December 15, 2021 without enacting a new congressional district map with 17 districts. Legislative Intervenors admit that, on December 15, 2021, the House State Government Committee voted a preliminary congressional district plan out of committee. Legislative Intervenors deny that this plan has not been brought up for consideration by the House, because it did receive first consideration. It will not be brought up for second consideration by the House until the General Assembly reconvenes, on or after January 4, 2022. Legislative Intervenors deny that there is no realistic prospect that the General Assembly will pass a final congressional redistricting plan that can be approved by the Governor, as there is still time to pass and reach agreement on such a plan.

32. Denied. Legislative Intervenors further answer that there is still time for the General Assembly and the Governor to reach agreement on a plan by the Respondents' January 24, 2022 deadline. That said, after reasonable investigation, Legislative Respondents are without knowledge or information sufficient to form a belief about whether January 24, 2022 is in fact a real deadline.

33. Legislative Intervenors deny that this Court needs to intervene at this time to protect Petitioners' constitutional rights, as there is still time for a plan to be

passed. Further answering, Petitioners' Application for the Exercise of King's Bench Power or Extraordinary Jurisdiction speaks for itself. Legislative Intervenors deny any characterization of that filing.

COUNT I

34. Legislative Intervenors incorporate their responses to paragraphs 1-33 of the Petition as if fully restated herein.

35. Admitted.

36. Paragraph 36 contains legal conclusions to which no response is required, and the opinion in *LWVI* speaks for itself. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 36.

37. Paragraph 37 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 37. Legislative Intervenors deny any characterization of this action, which speaks for itself.

38. Legislative Intervenors admit that, in view of the 2020 Census, the current congressional district plan is malapportioned and the districts vary from the ideal population.

39. Denied. Legislative Intervenors deny that their failure to act is the cause of the imbalance in population. Legislative Intervenors admit that a new

congressional redistricting plan is needed. By way of further answer, there is still ample time to pass such a plan.

40. Paragraph 40 contains a legal conclusion to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenor deny the allegations in paragraph 40.

COUNT II

41. Legislative Intervenor incorporate their responses to paragraphs 1-40 of the Petition as if fully restated herein.

42. Admitted.

43. Paragraph 43 contains legal conclusions to which no response is required and the opinions referenced in this paragraph speak for themselves. To the extent that a responsive pleading is required, Legislative Intervenor deny the allegations in paragraph 43.

44. Legislative Intervenor admit only that the General Assembly and Governor have not yet enacted a congressional redistricting plan. After reasonable investigation, Legislative Intervenor are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 44 and therefore deny them.

45. After reasonable investigation, Legislative Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 45 and therefore deny them.

46. Legislative Intervenors admit only that the General Assembly and Governor have not yet enacted a congressional redistricting plan. The remainder of paragraph 46 contains legal conclusions to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in the remainder of paragraph 46.

47. Paragraph 47 of the Petition contains a legal conclusion to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 47.

COUNT III

48. Legislative Intervenors incorporate their responses to paragraphs 1-47 of the Petition as if fully restated herein.

49. Admitted.

50. Admitted.

51. Legislative Intervenors admit that, in view of the 2020 Census data, the current congressional districts deviate from the ideal district population. After reasonable investigation, Legislative Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegation regarding how

such population imbalances impact the “weight” of each citizen’s vote and therefore deny it.

52. Paragraph 52 of the Petition contains a legal conclusion to which no response is required. To the extent that a responsive pleading is required, Legislative Intervenors deny the allegations in paragraph 52.

53. Legislative Intervenors deny each and every factual allegation in the Petition not expressly admitted herein as true.

NEW MATTER¹

FIRST AFFIRMATIVE DEFENSE

54. One or more counts of the Petition fail to state a claim as to which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

55. Petitioners failed to join necessary or indispensable parties.

THIRD AFFIRMATIVE DEFENSE

56. Petitioners lack standing.

FOURTH AFFIRMATIVE DEFENSE

57. Petitioners’ claims are not ripe.

¹ Legislative Intervenors reserve the right to assert additional affirmative defenses that may arise during the course of this matter.

FIFTH AFFIRMATIVE DEFENSE

58. The claims asserted in the Petition are non-justiciable.

NOTICE TO PLEAD

Petitioners are notified to plead to this Answer and New Matter within 30 days from service or a judgment may be entered against them.

WHEREFORE, the Legislative Intervenors respectfully request that the Court dismiss the Petition in its entirety and grant such other and further relief to them as the Court deems just and proper.

Dated:

Respectfully submitted,

/s/ Anthony R. Holtzman

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** Pro Hac Vice application forthcoming
Counsel for Legislative Intervenors Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives*

VERIFICATION

I, _____ hereby verify that the factual averments and denials of factual averments made in the foregoing Answer with New Matter are true and correct to the best of my knowledge and information or belief. I make this verification subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: _____

Exhibit C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 464 M.D. 2021

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 Bachunis; Tom DeWall; Stephanie McNulty; and Janet Temin,

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

No. 465 M.D. 2021

Philip T. Gressman; Ron Y. Donagi; Kristopher R. Tapp; Pamela A. Gorkin; David P. Marsh; James L. Rosenberger; Amy Myers; Eugene Boman; Gary Gordon; Liz McMahon; Timothy G. Feeman; and Garth Isaak

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

ORDER

AND NOW, this ___ day of _____, 202__, upon consideration of the Application for Leave to Intervene of the Speaker and Majority Leader of the Pennsylvania House of Representative and the President *Pro Tempore* and Majority Leader of the Pennsylvania Senate, and any response thereto, it is hereby ORDERED that (1) the request for leave to intervene is granted and (2) the Answers that are attached to the Application as Exhibits A & B are deemed filed.

J.

Exhibit D

VERIFICATION

I, Bryan D. Cutler, Speaker of the Pennsylvania House of Representatives, depose and say, subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, that the factual allegations set forth in the foregoing Application for Leave to Intervene are true and correct to the best of my knowledge, information, and belief.

Dated this 24th day of December, 2021.

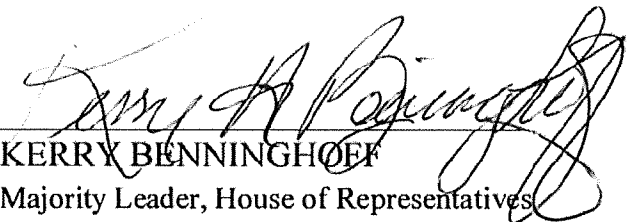


BRYAN D. CUTLER
Speaker of the House of Representatives

VERIFICATION

I, Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives, deposes and says, subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, that the factual allegations set forth in the foregoing Application for Leave to Intervene are true and correct to the best of my knowledge, information, and belief.

Dated this 24th day of December, 2021


KERRY BENNINGHOFF
Majority Leader, House of Representatives

VERIFICATION

I, Jake Corman, President *Pro Tempore* of the Pennsylvania Senate, depose and say, subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, that the factual allegations set forth in the foregoing Application for Leave to Intervene are true and correct to the best of my knowledge, information, and belief.

Dated this 27th day of December, 2021.

A handwritten signature in cursive script that reads "Jake Corman".

JAKE CORMAN
President *Pro Tempore* of the Pennsylvania
Senate

VERIFICATION

I, Kim Ward, Majority Leader of the Pennsylvania Senate, depose and say, subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, that the factual allegations set forth in the foregoing Application for Leave to Intervene are true and correct to the best of my knowledge, information, and belief.

Dated this 27th day of December, 2021.

A handwritten signature in cursive script, appearing to read "Kim Ward".

KIM WARD
Majority Leader of the Pennsylvania Senate

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by PACFile eService as follows:

All counsel of record

Date: December 27, 2021

/s/ Anthony R. Holtzman
Anthony R. Holtzman