

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROW; WILLIAM TUNG;
ROSEANNE MILAZZO; BURT SIEGEL; SUSAN
CASSANELLI; LEE CASSANELLI; LYNN WACHMAN;
MICHAEL GUTTMAN; MAYA FONKEU; BRADY
HILL; MARY ELLEN BALCHUNIS; TOM DEWALL;
STEPHANIE MCNULTY; and JANET TEMIN,

Petitioners

v.

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

Respondents

No. 464 MD 2021

CONSOLIDATED WITH

PHILIP T. GRESSMAN; RON Y. DONAGI;
KRISTOPHER R. TAPP; PAMELA GORKIN; DAVID P.
MARSH; JAMES L. ROSENBERGER; AMY MYERS;
EUGENE BOMAN; GARY GORDON; LIZ MCMAHON,
TIMOTHY G. FEEMAN; and GARTH ISAAK,

Petitioners

v.

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of the Commonwealth of Pennsylvania; and JESSICA
MATHIS, in her capacity as Director for the Pennsylvania
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Respondents

No. 465 MD 2021

NOTICE OF APPEAL

Notice is hereby given that Khalif Ali, Maryn Formley, Richard Rafferty, Patrick Beaty, Susan Gobreski, Barbara Hill, Judy Hines, Jodi Greene, John Thompson, Cynthia Alvarado, and Timothy L. Kauffman, Proposed Intervenor-Petitioners in the above-named action, hereby appeal to the Supreme Court of Pennsylvania from the order entered in these consolidated matters on the 14th Day of January, 2022. This order has been entered in the docket as evidenced by the attached copy of the docket entry. Exhibit A. The complete transcript of the January 6, 2022 hearing on the Applications for Leave to Intervene has been lodged of record, as noted by docket entry dated January 18, 2022. Exhibit A.

This Notice of Appeal is accompanied by a Jurisdictional Statement, as required by Pa.R.A.P. 909 and 910.

Respectfully submitted,

/s/ Benjamin D. Geffen

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Counsel for Proposed Ali Intervenors

Dated: January 20, 2022

Exhibit A to
Notice of Appeal
(Docket Entries)

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 464 MD 2021**Page 1 of 161****January 20, 2022****CAPTION**

Carol Ann Carter, Monica Parrilla,
Rebecca Poyourow, William Tung,
Roseanne Milazzo, Burt Siegel,
Susan Cassanelli, Lee Cassanelli,
Lynn Wachman, Michael Guttman,
Maya Fonkeu, Brady Hill, Mary Ellen
Balchunis, Tom DeWall, Stephanie McNulty
and Janet Temin,
Petitioners

v.

Leigh M. Chapman, in her official
capacity as the Acting Secretary of the
Commonwealth of Pennsylvania;
Jessica Mathis, in her official capacity
as Director for the Pennsylvania Bureau
of Election Services and Notaries,
Respondents

CASE INFORMATION

Initiating Document: Petition for Review

Case Status: Active

Case Processing Status: January 5, 2022 Awaiting Petitioner Paperbooks

Journal Number:

Case Category: Miscellaneous Case Type(s): Equity

CONSOLIDATED CASES**RELATED CASES**

Docket No / Reason	Type	Docket No / Reason	Type
465 MD 2021 Same Issue(s)	Consolidated	465 MD 2021 Similar Issue(s)	Related

COUNSEL INFORMATION**Petitioner Wachman, Lynn**

Pro Se: No

IFP Status:

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Miscellaneous Docket Sheet

Docket Number: 464 MD 2021

Page 157 of 161

January 20, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
January 14, 2022	Order Filed McCullough, Patricia A.			01/14/2022
Document Name: Re: Applications for Intervention and Redistricting Plans and rquired filings				

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 464 MD 2021

Page 158 of 161

January 20, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
	Comment:	intervene and the applications for expedited review and the responses thereto filed in the above-consolidated actions, it is hereby ORDERED:		
		1. This Order supersedes this Court's December 20, 2021 Order.		
		2. The Applications for Leave to Intervene of: (i) the Speaker and Majority Leader of the Pennsylvania House of Representative and the President Pro Tempore and Majority Leader of the Pennsylvania Senate, (ii) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; (iii) Tom Wolf, Governor of the Commonwealth of Pennsylvania; (iv) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania; (v) Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives; and (vi) Congressman Guy Reschenthaler, Swatara Township Commissioner Jeffrey Varner, Tom Marino, Ryan Costello, and Bud Shuster are GRANTED.		
		Pursuant to the Notice of Amendment and Joinder from Senate Democratic Caucus Intervenors and Democratic Senator Intervenors, the Applications for Leave to Intervene of: (i) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; and (ii) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania are hereby joined, and these individuals shall constitute a single party. The Application for Intervention filed by Democratic Senator Intervenors shall be withdrawn. Democratic Senator Intervenors are added to the Senate Democratic Caucus Intervenors' Application for Intervention.		
		These intervenors which are hereinafter referred to as Parties shall be allowed to participate in these consolidated actions as parties. Any answers to the Petitions for Review attached to applications to intervene as exhibits are deemed filed.		
		3. All Parties shall submit for the Court's consideration at least one (1) but no more than two (2) proposed 17-district congressional redistricting plan(s) that are consistent with the results of the 2020 Census and, if the party chooses to do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on Monday, January 24, 2022.		
		4. Parties must file a responsive brief and/or a responsive expert report (from the same expert who prepared the January 24 report or any other expert), addressing other parties' January 24 submissions, by 5:00 p.m. on Wednesday, January 26, 2022.		
		5. The Applications for Leave to Intervene as parties filed by (i) Voters of the Commonwealth of Pennsylvania; (ii) Citizen-Voters; (iii) Draw the Lines-PA; and (iv) Khalif Ali et al. are DENIED.		
		Voters of the Commonwealth of Pennsylvania, Citizen-Voters, Draw the Lines-PA, and Khalif Ali et al., are permitted to participate in these matters as Amicus Participants, which means that their participation shall be limited to submissions to the Court in writing as set forth in Paragraph 6 of this Order.		
		6. Amicus Participants who wish to submit for the Court's consideration one (1) proposed 17-district congressional redistricting map/plan that is consistent with the results of the 2020 Census shall file the proposed map/plan and, if the Amicus Participant chooses to do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on Monday, January 24, 2022.		
		7. All proposed 17-district congressional redistricting maps/plans shall comply with constitutional standards and any other standards required by law.		
		8. After submission, no proposed plan/map may be later modified or amended.		
		9. No Party or Amicus Participant may take discovery in this matter.		
		10. The Parties shall submit to the Court a Joint Stipulation of Facts by 2:00 p.m. on Wednesday, January 26, 2022.		
		11. The Court shall conduct an evidentiary hearing on Thursday, January 27, 2022, and Friday, January 28, 2022, participation in which is limited to the		

Miscellaneous Docket Sheet

Docket Number: 464 MD 2021

Page 159 of 161

January 20, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
	Parties as identified herein. The hearing will begin at 9:30 a.m. in Courtroom 3001 of the Pennsylvania Judicial Center, Harrisburg, PA. It shall be the responsibility of Petitioners to secure the services of a court reporter(s) throughout the duration of the hearing. Each Party is limited to presenting one witness at the hearing, who shall be subject to cross examination by the other Parties. Opening and closing statements and argument by Parties shall be permitted. The Court will also consider revisions to the 2022 election schedule/calendar as part of the hearing. 12. If the General Assembly has not produced a new congressional map by January 30, 2022, the Court shall proceed to issue an opinion based on the hearing and evidence presented by the Parties.			
January 18, 2022	Transcript Filed Court Reporter			
	Document Name: Proceedings held 1/6/2022			
January 18, 2022	Entry of Appearance Mavroudis, Dimitrios	Wolf, Tom	Intervenor	
	Document Name: Dimitrios Mavroudis, Esquire on behalf of Intervenor-Resp. Tom Wolf, Gov. of Cmwlt. of PA			
January 18, 2022	Entry of Appearance Tucker, Joe H., Jr.	Wolf, Tom	Intervenor	
	Document Name: Joe H. Tucker, Jr., Esquire on behalf of Intervenor-Resp. Tom Wolf, Gov., Cmwlt. of PA			
January 18, 2022	Entry of Appearance Rickabaugh, Jessica Ann	Wolf, Tom	Intervenor	
	Document Name: Jessica Rickabaugh, Esquire on behalf of Intervenor-Resp. Tom Wolf, Gov. of the Cmwlt. of PA			
January 18, 2022	Order Granting Application to be Admitted Pro Hac Vice Per Curiam			01/18/2022
	Document Name: Abha Khanna, Esq. for "Carter" Petitioners			
	Comment: NOW, January 18, 2022, upon consideration of the motion of Michael McDonald, Esq., for admission pro hac vice of Abha Khanna, Esq., on behalf of Petitioners 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, it is hereby ordered: (1) Abha Khanna, Esq. is admitted pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301, as co-counsel on behalf of said Petitioners in this matter; (2) Abha Khanna, Esq. shall abide by the rules of this Court including all disciplinary rules; (3) Abha Khanna, Esq. shall immediately notify this Court of any matter affecting her standing at the bar of any other court where she may be admitted to practice; and (4) Michael McDonald, Esq., the moving attorney herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of said Petitioners.			

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROW; WILLIAM TUNG;
ROSEANNE MILAZZO; BURT SIEGEL; SUSAN
CASSANELLI; LEE CASSANELLI; LYNN WACHMAN;
MICHAEL GUTTMAN; MAYA FONKEU; BRADY
HILL; MARY ELLEN BALCHUNIS; TOM DEWALL;
STEPHANIE MCNULTY; and JANET TEMIN,

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v.

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No. 464 MD 2021

CONSOLIDATED WITH

PHILIP T. GRESSMAN; RON Y. DONAGI;
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MARSH; JAMES L. ROSENBERGER; AMY MYERS;
EUGENE BOMAN; GARY GORDON; LIZ MCMAHON,
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MATHIS, in her capacity as Director for the Pennsylvania
Bureau of Election Services and Notaries,

Respondents

No. 465 MD 2021

JURISDICTIONAL STATEMENT

Pursuant to Pennsylvania Rules of Appellate Procedure 909 and 910, Proposed Intervenor-Petitioners Khalif Ali, Maryn Formley, Richard Rafferty, Patrick Beaty, Susan Gobreski, Barbara Hill, Judy Hines, Jodi Greene, John Thompson, Cynthia Alvarado, and Timothy L. Kauffman (collectively, “Proposed Ali Intervenors”) submit this Jurisdictional Statement in support of their Notice of Appeal from the Commonwealth Court’s January 14, 2022 Order denying their Application for Leave to Intervene in these consolidated matters.

I. Opinion Below

This is an appeal from the Order entered by the Honorable Patricia A. McCullough of the Commonwealth Court on January 14, 2022 (the “Order”). A copy of the Order is attached as Exhibit A. The Court has not issued an opinion to accompany the Order.

II. Basis for Jurisdiction of the Supreme Court

This appeal is commenced as a matter of right. *See* Pa.R.A.P. 1101. The Supreme Court has exclusive jurisdiction over appeals from appealable orders of the Commonwealth Court entered in any matter that was originally commenced in the Commonwealth Court. *See* 42 Pa.C.S. § 723(a); Pa.R.A.P. 1101(a)(1). Both of these consolidated matters were commenced in the Commonwealth Court pursuant to its original jurisdiction. *See* 42 Pa.C.S. § 761(a).

The January 14, 2022 Order denying Proposed Ali Intervenors' Application for Leave to Intervene is an immediately appealable collateral order because "the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost," Pa.R.A.P. 313. Because Proposed Ali Intervenors have been denied party status in this case, under the Order they will lack the opportunity to submit a responsive brief and expert report after the parties submit their proposals for a new congressional districting plan. Order ¶¶ 4-5. In addition, as non-parties, Proposed Ali Intervenors will lack the opportunity to participate in the evidentiary hearing scheduled for January 27 and 28. Order ¶ 11. The right of the Proposed Ali Intervenors to have a full voice in the litigation that will set Pennsylvania's new congressional districting plan (should the General Assembly and Governor remain at an impasse) is "too important to be denied review." Pa.R.A.P. 313(b). Although the Proposed Ali Intervenors will be allowed to submit a proposed plan to the Commonwealth Court as amici curiae, they will not be allowed to file responses to any other proposals, nor will they be allowed to support their plan at the hearing or to rebut other plans at the hearing. Thus their claims regarding what is or is not a constitutional congressional plan will be "irreparably lost," "if review is postponed until final judgment in the case." *Id.* Under such circumstances, "a [trial] court's order denying intervention is one type of order which must be appealed within

thirty days of its entry under Rule of Appellate Procedure 903, or not at all, precisely because the failure to attain intervenor status forecloses a later appeal.” *In re Barnes Found.*, 871 A.2d 792, 794 (Pa. 2005).¹

III. Text of the Order in Question

This appeal seeks review of Paragraph 5 of the January 14, 2022 Order:

The Applications for Leave to Intervene as parties filed by (i) Voters of the Commonwealth of Pennsylvania; (ii) Citizen-Voters; (iii) Draw the Lines-PA; and (iv) Khalif Ali et al. are **DENIED**.

Voters of the Commonwealth of Pennsylvania, Citizen-Voters, Draw the Lines-PA, and Khalif Ali et al., are permitted to participate in these matters as Amicus Participants, which means that their participation shall be limited to submissions to the Court **in writing** as set forth in Paragraph 6 of this Order.

IV. Concise Statement of Procedural History

Both of these consolidated cases were initiated by Petitions for Review filed on December 17, 2021. By order dated December 20, 2021, the Commonwealth Court consolidated the two cases. By another order issued that same date, the Commonwealth Court ordered that any applications to intervene must be filed by December 31, 2021. Proposed Ali Intervenors timely filed an application for leave to intervene on December 31, as did nine other groups of proposed intervenors. All of the named parties timely filed answers to Proposed Ali Intervenors’ application;

¹ In this case, the notice of appeal is due within ten days of entry of the order, because this matter arises under the Pennsylvania Election Code. *See* Pa.R.A.P. 903(c)(1)(ii).

none opposed it. The Court held a hearing on all of the applications for leave to intervene on January 6, in which Proposed Ali Intervenors participated.

By Order dated January 14, 2022, the Commonwealth Court denied Proposed Ali Intervenors' Application for Leave to Intervene, as well as those of three other groups of individual voters. In that same Order, the Commonwealth Court granted intervenor status to six other groups of people, all of whom are current elected officeholders.

V. Question Presented for Review

Did the Commonwealth Court err by denying Proposed Ali Intervenors' Application for Leave to Intervene?

Suggested Answer: Yes.

Respectfully submitted,

/s/ Benjamin D. Geffen

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Counsel for Proposed Ali Intervenors

Dated: January 20, 2022

Exhibit A to
Jurisdictional
Statement
(Order of Jan. 14, 2022)

ORDER

AND NOW, this 14th day of January, 2022, in consideration of the petitions to intervene and the applications for expedited review and the responses thereto filed in the above-consolidated actions, it is hereby ORDERED:

1. This Order supersedes this Court's December 20, 2021 Order.
2. The Applications for Leave to Intervene of: (i) the Speaker and Majority Leader of the Pennsylvania House of Representative and the President Pro Tempore and Majority Leader of the Pennsylvania Senate, (ii) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; (iii) Tom Wolf, Governor of the Commonwealth of Pennsylvania; (iv) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania; (v) Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives; and (vi) Congressman Guy Reschenthaler, Swatara Township Commissioner Jeffrey Varner, Tom Marino, Ryan Costello, and Bud Shuster are **GRANTED**.

Pursuant to the Notice of Amendment and Joinder from Senate Democratic Caucus Intervenors and Democratic Senator Intervenors, the Applications for Leave to Intervene of: (i) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; and (ii) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania are hereby joined, and these individuals shall constitute a single party. The Application for Intervention filed by Democratic Senator Intervenors shall be withdrawn. Democratic Senator Intervenors are added to the Senate Democratic Caucus Intervenors' Application for Intervention.

These intervenors which are hereinafter referred to as Parties shall be allowed to participate in these consolidated actions as parties. Any answers to the Petitions for Review attached to applications to intervene as exhibits are deemed filed.

3. All Parties shall submit for the Court's consideration at least one (1) but no more than two (2) proposed 17-district congressional redistricting plan(s) that are consistent with the results of the 2020 Census and, if the party chooses to

do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on **Monday, January 24, 2022.**

4. Parties must file a responsive brief and/or a responsive expert report (from the same expert who prepared the **January 24** report or any other expert), addressing other parties' **January 24** submissions, by 5:00 p.m. on **Wednesday, January 26, 2022.**
5. The Applications for Leave to Intervene as parties filed by (i) Voters of the Commonwealth of Pennsylvania; (ii) Citizen-Voters; (iii) Draw the Lines-PA; and (iv) Khalif Ali et al. are **DENIED.**

Voters of the Commonwealth of Pennsylvania, Citizen-Voters, Draw the Lines-PA, and Khalif Ali et al., are permitted to participate in these matters as Amicus Participants, which means that their participation shall be limited to submissions to the Court **in writing** as set forth in Paragraph 6 of this Order.

6. Amicus Participants who wish to submit for the Court's consideration one (1) proposed 17-district congressional redistricting map/plan that is consistent with the results of the 2020 Census shall file the proposed map/plan and, if the Amicus Participant chooses to do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on **Monday, January 24, 2022.**
7. All proposed 17-district congressional redistricting maps/plans shall comply with constitutional standards and any other standards required by law.
8. After submission, no proposed plan/map may be later modified or amended.
9. No Party or Amicus Participant may take discovery in this matter.
10. The Parties shall submit to the Court a Joint Stipulation of Facts by 2:00 p.m. on **Wednesday, January 26, 2022.**
11. The Court shall conduct an evidentiary hearing on **Thursday, January 27, 2022, and Friday, January 28, 2022,** participation in which is limited to the Parties as identified herein. The hearing will begin at 9:30 a.m. in Courtroom 3001 of the Pennsylvania Judicial Center, Harrisburg, PA. It shall be the responsibility of Petitioners to secure the services of a court reporter(s)

throughout the duration of the hearing. Each Party is limited to presenting one witness at the hearing, who shall be subject to cross examination by the other Parties. Opening and closing statements and argument by Parties shall be permitted. The Court will also consider revisions to the 2022 election schedule/calendar as part of the hearing.

- 12.If the General Assembly has not produced a new congressional map by January 30, 2022, the Court shall proceed to issue an opinion based on the hearing and evidence presented by the Parties.

s/ Patricia A. McCullough
PATRICIA A. McCULLOUGH, Judge

CERTIFICATE OF COMPLIANCE

I 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/ Benjamin D. Geffen
Benjamin D. Geffen

Dated: January 20, 2022

PROOF OF SERVICE

Pursuant to Pa.R.A.P. 906, on this date I caused a copy of the foregoing Notice of Appeal and Jurisdictional Statement to be served on the Court and on all counsel of record, via the Court's e-filing system. I further caused a copy to be served on this date on the Court Reporter who transcribed the January 6, 2022 hearing, via U.S.P.S. First-Class Mail to:

Hawk Court Reporting
483 Worthington Slate Lick Road
Worthington PA 16262

/s/ Benjamin D. Geffen
Benjamin D. Geffen

Dated: January 20, 2022