

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charlene DAVID, Rosamaria TELEP, Jacqueline PICKERING, Amy BRUCKNER, Colleen Gray NGUYEN, Jessica GITTENS, Tonya MORROW, Madeleine SWEITZER, Kerry MILCH, Joshua FERRIS, and Gary MINTZ,
Petitioners,

No.

ELECTION MATTER

v.

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

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PETITION FOR REVIEW

Our Commonwealth stands on the precipice of political and constitutional crisis.

Because of the careful efforts made by the Legislative Reapportionment Commission (“LRC”) to enact a constitutional state legislative redistricting plan and receive comprehensive public input, following the delayed transmission of census data from the United States Commerce Department last summer, the LRC has prepared its preliminary plan, conducted public hearings and received feedback, and will adopt a Final Plan in the coming days. Under the state constitution, the inevitable challenges to this plan can be filed with the Supreme Court of Pennsylvania over the ensuing thirty days, which historically has required weeks, at a minimum, to

adjudicate such claims. Once the Supreme Court has finally ruled against all appeals or the last day for filing an appeal has passed with no appeal taken, only then does the LRC Final Plan have the force of law.

Unfortunately, that process runs headfirst into the Commonwealth's primary election calendar. Under state law, the Primary Election will be held on May 17 and accordingly, candidate nomination petitions are scheduled to circulate from February 15 through March 7, thirteen to ten weeks prior to the primary. Therefore, come February 15, neither candidates for state legislative office nor their supporters will know which map is in effect for 2022—the existing plan from 2012, or the LRC Final Plan? And given the time the Court may require to adjudicate challenges to the map, this likely cannot even be resolved by the deadline for filing nomination petitions with the Department of State.

The General Assembly is best-positioned to address this morass, but House leadership has abdicated their responsibilities—the House Majority Leader recently stated that he is “not willing to entertain” any changes to the calendar. With the General Assembly refusing, the judiciary must take action as it has in the past—because both the United States Constitution and Pennsylvania Constitution require that the statutory timeline yield to present realities. If the LRC has enacted a constitutional redistricting plan, it should be allowed to take effect this year.

Petitioners herein are Pennsylvania residents who will be injured if a constitutional Final Plan is prevented from taking effect because of this calendar. As this Petition will review, Petitioners reside in districts in which their right to equal

representation under the one-person, one-vote principle has been abridged over time as their districts have grown in population more swiftly than others. With the enactment of a constitutional LRC Final Plan, their ability to participate in free and equal elections would be restored.

Petitioners therefore file this suit to protect their legal rights and to ensure that this Court can enter all necessary relief, in the form of adjustments to the 2022 primary calendar to accommodate the Supreme Court’s consideration of the LRC Final Plan, and in support thereof aver as follows.

PARTIES

1. The Petitioners are as follows. Each is a registered Pennsylvania voter who resides in a State House or Senate District (or both) which presently is at least 10% more populous than the target district population for decennial redistricting:

Petitioner	City/Borough/Twp and County of Residence	Current Malapportioned District(s)
Charlene David	Pleasant Hills, Allegheny County	SD 37
Rosamaria Telep	Mt. Lebanon, Allegheny County	SD 37
Jacqueline Pickering	Uwchlan Twp. (Exton), Chester County	HD 155
Amy Bruckner	Upper Uwchlan Twp. (Downingtown), Chester County	HD 155
Colleen Gray Nguyen	East Pennsboro Twp. (Enola), Cumberland County	HD 87
Jessica Gittens	Hampden Twp., Cumberland County	HD 87
Tonya Morrow	Allentown, Lehigh County	SD 16
Madeleine Sweitzer	Philadelphia	SD 1, HD 182

Kerry Milch	Philadelphia	SD 1, HD 182
Joshua Ferris	Philadelphia	SD 1, HD 181
Gary Mintz	Philadelphia	SD 1, HD 175

2. Respondent Leigh Chapman is the Acting Secretary of the Commonwealth and is sued in her official capacity only. In that capacity, Acting Secretary Chapman is charged with general supervision and administration of Pennsylvania's elections and election laws. Acting Secretary Chapman is Pennsylvania's Chief Election Official and a member of the Governor's Executive Board. Among her numerous responsibilities in administering elections, Acting Secretary Chapman is responsible for preparing the form for candidate nomination petitions for all state offices, receiving candidate nomination petition and affidavit filings, and examining said filings for material errors or defects 25 P.S. §§ 2867-73, 2936.

3. Respondent Jessica Mathis is the Director for the Bureau of Election Services and Notaries, a branch of the Pennsylvania Department of State, and she is sued in her official capacity only. In this capacity, Director Mathis is charged with supervising and administering the Commonwealth's elections and electoral process, including the candidate nomination process. The Bureau of Election Services and Notaries is responsible for planning, developing, and coordinating the statewide implementation of the Election Code.

JURISDICTION

4. This Court has original jurisdiction over this Verified Petition for Review under 42 Pa. C.S. § 761(a)(1) because this matter is asserted against Commonwealth officials in their official capacities.

HOW PENNSYLVANIA REDISTRICTS

5. Under the Pennsylvania Constitution, state legislative reapportionment occurs every ten years, and is accomplished through a five-member independent body. The Legislative Reapportionment Commission (“LRC”) was created via the Constitutional Convention of 1967-68 and is codified as Article II, section 17 of the Pennsylvania Constitution.

6. Article II, section 17 sets a series of mandatory deadlines for the redistricting process. In particular:

- a. **Section 17(c): The LRC must certify a preliminary reapportionment plan within 90 days after the necessary census data is deemed available.** This cycle, the LRC resolved that it had received the necessary data in a usable format, and thus it became “available” to the Commission for redistricting purposes, on October 14, 2021. *See* LRC Resolution 6A. The LRC adopted its preliminary plan via a pair of votes on December 16, 2021.
- b. **Section 17(c): The LRC shall have 30 days after filing the preliminary plan to make corrections in the plan, and any person aggrieved by the preliminary plan shall have the same 30-day period to file exceptions with the commission.** Given weekends and the Martin Luther King Jr. holiday observance, that deadline fell on Tuesday, January 18, 2022.
- c. **Section 17(c): If exceptions are filed, the LRC shall have 30 days after the date the exceptions were filed to prepare and file a revised reapportionment plan.** Exceptions have already been filed, and hearings held on them; the LRC has until February 17, 2022 to resolve them, but likely will act sooner.
- d. **Section 17(d): Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within 30 days after the filing thereof.** Once the LRC adopts a Final Plan, this

date will be determined. As of the date of this filing, the deadline for filing appeals can be no sooner than February 21, 2022.

- e. **Section 17(e). When the Supreme Court has finally decided all appeals, or the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment.** But until that day on which the Court determines that the LRC Final Plan is constitutional, it does not have the force of law.

THE NOMINATION TIMELINE FOR MAJOR PARTY CANDIDATES

7. Under Pennsylvania law, the 2022 primary election will be held on May 17, 2022, the third Tuesday in May. *See* 25 P.S. §2753(a).

8. Accordingly, candidate nomination petitions for the state legislature and other offices on the 2022 ballot may circulate only from February 15 through March 7, the 13th Tuesday through 10th Tuesday prior to the primary, and nomination petitions, along with other required filings and fees, shall be filed on or before that 10th Tuesday. *See* 25 P.S. §§ 2868, 2873(d).

9. Challenges to candidate nomination petitions must be filed with the Commonwealth Court and Secretary of the Commonwealth by seven days after the last day for filing nomination petitions, March 14. *See* 25 P.S. § 2937. These matters must be resolved by Commonwealth Court expeditiously. Id.

10. Because of Act 77's introduction of no-excuse mail-in voting, there are new pressures on this timeline. Under 25 P.S. § 3150.15, the county boards of elections are directed to deliver or mail official mail-in ballots as soon as a ballot is certified and the ballots are available, and in any event not later than the second

Tuesday prior to the primary. Given ballot printing and mailing times, including ballot return mailing, finalizing the ballot promptly is of utmost importance given how widely adopted mail-in voting has become.

THE NEED FOR A NEW LEGISLATIVE REAPPORTIONMENT PLAN

11. The Pennsylvania Constitution requires that every ten years, the LRC divide the Commonwealth “into 50 senatorial and 203 representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable.” Pa. Const’n. Art. II, §§ 16-17.

12. As Pennsylvania’s population has grown and shifted over the past decade, the need for reapportionment is palpable.

13. This past August, the U.S. Secretary of Commerce delivered census block results of the 2020 Census, which the LRC employs for its constitutional task. The data is commonly referred to as “P.L. 94-171 data,” a reference to the legislation enacting this process. *See* Pub. L. No. 94-171, 89 Stat. 1023 (1975).

14. The data confirms that the current legislative reapportionment scheme, while constitutional at its enactment in 2012, is now unconstitutionally malapportioned. See Arrington v. Elections Bd., 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge court) (explaining that “existing apportionment schemes become instantly unconstitutional upon the release of new decennial census data” (internal quotation marks omitted)).

15. These changes render Pennsylvania’s current state legislative districts both unlawful and unconstitutional. The population equality required to be pursued

by Pa. Const'n. Art. II, § 16, is no longer in place for Petitioners, or for the residents of this Commonwealth generally in 2022.¹

16. This Chart shows the five most malapportioned House districts under the legislative redistricting plan currently in effect, comparing their current populations with the current target of 64,053 residents per district, per 2020 Census data:

Current District	Location	2020 Population	Deviation from Target Size	Dev %
182	Philadelphia (Center City West, Washington Square West)	77,567	+13,514	21.1%
87	Cumberland County (Camp Hill, East Pennsboro)	74,280	+10,227	16.0%
181	Philadelphia (North Philadelphia)	73,898	+9,845	15.4%
155	Chester County (central townships)	73,652	+9,599	15.0%
175	Philadelphia (Fishtown/Center City/Queen Village)	72,169	+8,116	12.7%

17. By way of comparison, the following five House districts each have at least 11.7% *fewer* voters than the current district target population of 64,053 residents; their residents' individual votes thus each carry far more weight than those listed in the prior paragraph.

¹ In Holt v. 2011 LRC, 67 A. 3d 1211 (Pa. 2013) (“Holt II”), the Supreme Court of Pennsylvania confirmed that while the federal law may permit a population deviation range of up to 10%, the Pennsylvania Constitution does not. “Section 16 of Article II of the Pennsylvania Constitution does not speak of a 10% deviation range; it requires districts ‘as nearly equal in population as practicable.’” Id. at 1239.

Current District	Location	2020 Population	Deviation from Target Size	Dev %
123	Schuylkill County (partial)	55,191	-8,862	-13.84%
64	Venango County (all), Butler County (partial)	56,239	-7,814	-12.20%
50	Greene County (all), Fayette and Washington Counties (partial)	56,330	-7,723	-12.06%
63	Clarion County (all), Armstrong and Forest Counties (partial)	56,417	-7,636	-11.92%
49	Fayette and Washington Counties (partial)	56,512	-7,541	-11.77%

18. For the State Senate, the following Chart shows the three most malapportioned Senate districts under the legislative redistricting plan currently in effect, compared with the target of 260,054 residents per district per current Census data

Current Senate District	Location	2020 Population	Deviation from Target Size	Dev %
1	Philadelphia (Center City, South Philadelphia, River Wards)	303,227	+43,173	16.6%
37	Allegheny County (western municipalities), Washington County (Peters Twp.)	289,871	+29,817	11.5%
16	Lehigh County (City of Allentown, majority of county)	284,566	+24,512	9.4%

19. And by way of comparison, the following three Senate districts each have at least 9.5% fewer voters than the current district target population of 260,054

residents; their residents’ individual votes thus each carry far more weight than those listed in the prior paragraph.

Current Senate District	Location	2020 Population	Deviation from Target Size	Dev %
50	Crawford and Mercer Counties (all), Erie and Warren Counties (partial)	230,305	-29,749	-11.4%
41	Armstrong and Indiana Counties (all), Butler and Westmoreland Counties (partial)	233,994	-26,060	-10.0%
23	Bradford, Lycoming, Sullivan, and Union Counties (all), and Susquehanna County (partial)	235,354	-24,700	-9.5%

20. If used in any future election, the current state legislative reapportionment plan would unconstitutionally dilute the strength of Petitioners’ votes because they live in districts with populations which are significantly larger than those in which other voters live.

THE LOOMING CRISIS

21. Per the Department of State, we are already behind schedule. Veronica Degraffenreid, then-Acting Secretary of the Commonwealth, most recently explained the problem via letter to the four legislative leaders and LRC Chair on December 21, 2021. In that letter, Acting Secretary Degraffenreid reviewed the current primary

calendar, including the February 15-March 7 dates for nomination petition circulation and explained the problem:

Those dates, however, presuppose that potential candidates know the legislative districts within which they plan to run. Candidates must know the size and shape of legislative districts, as only registered voters in a district are eligible to sign nomination petitions for those seeking office in their legislative district.

The problem is that the combination of LRC hearings, consideration of those comments by the LRC, and final plan release, will impact both the above dates as well as the follow-on event dates in the election cycle, including deadlines for candidates to withdraw, the adjudication of objections to individual nomination petitions, the preparation and delivery of balloting materials for military and overseas voters, and subsequent activities related to ballot preparation for the Primary.

These problems are exacerbated by other factors. In my June 28, 2021, letter I noted that three weeks of lead time before circulation of nomination petitions was required for counties to properly update voter registration files to ensure voters were assigned to revised election districts. That estimate was based on discussions with county election offices. The start of those three weeks begins after the date highlighted in my June letter as the date by which the Department needs a final map to be effective: January 24, 2022. This date is a mere week after the deadline date (January 18, 2022) for the filing of exceptions with the LRC. And the whole process will be further impacted by the time necessary to file and consider any appeals to the Pennsylvania Supreme Court of the final reapportionment plan. In short, it will not be possible to comply with the constitutionally mandated timeline for the finalization of the reapportionment plan, and the current statutorily established deadlines for the beginning of petition

circulation period and other subsequent deadlines leading up to the primary.

See Exhibit A, Degraffenreid Letter.

22. The LRC itself is not responsible for this delay. Instead, fault primarily lies with the United States Commerce Department. Under federal law, the P.L. 94-171 data to be used by the states for redistricting legislative and congressional seats was due to the states no later than April 1, 2021. *See* 13 U.S.C. § 141 (“basic tabulations of population of each other State, shall, in any event, be completed, reported, and transmitted to each respective State within one year after the decennial census date.”)

23. In previous decades, this data has been provided to the states on a rolling basis, starting at least six weeks prior to the deadline. Pennsylvania had such data on March 9, 2011 for the prior redistricting cycle. *See* Holt vs. 2011 Legislative Reapportionment Comm’n, 38 A.3d 711, 719 (Pa. 2012) (“Holt I”).

24. In 2021, this data was not made available to the LRC until August 12, 2022, five months later, and was not deemed to be in a usable format for redistricting purposes until October 14, 2021. *See* LRC Resolution 6A, adopted October 25, 2021, available online at <https://www.redistricting.state.pa.us/resources/Press/2021-10-25%20Resolution%206A.pdf>

25. From that point, the LRC moved with considerable speed. Afforded up to 90 days under the Pennsylvania Constitution to adopt a preliminary plan, they required 63 days instead.

26. Under the Pennsylvania Constitution, as previously noted, any person aggrieved by the preliminary plan had until Tuesday, January 18, 2022 to file exceptions with the LRC. Even if the LRC had moved the very next day to consider all objections and prepare and file a revised, final apportionment plan, objectors would still have until Friday, February 18 to file appeals of the Final Plan with the Supreme Court of Pennsylvania, which will at a minimum require weeks to adjudicate such claims.

27. As of the time of this filing, the LRC has not publicly announced when it will next hold a public session to adopt its Final Plan. But whatever date it is, the deadline for filing appeals of the Final Plan will fall after the scheduled start for the circulation of nomination petitions.

28. Appeals of the final plan are inevitable. Every Final Plan adopted by the LRC since its inception has faced a double-digit number of appeals to the Supreme Court of Pennsylvania, as permitted by Article II, §17(d) of the Pennsylvania Constitution.

Year	Number of Appeals Adjudicated	Supreme Court of Pennsylvania Decision Resolving Appeals
1972	18	<u>Com. ex rel. Specter v. Levin</u> , 448 Pa. 1 (1972)
1982	29	<u>In re Reapportionment Plan for the Pa. General Assembly</u> , 442 A. 2d 661 (1982)
1992	25	<u>In re 1991 Pa. Legislative Reapportionment</u> , 609 A. 2d 132 (1992)

2002	11	<u>Albert v. 2001 LRC</u> , 790 A. 2d 989 (2002)
2012 (initial plan)	12	<u>Holt v. 2011 LRC</u> , 38 A.3d 711 (2012) (“ <u>Holt I</u> ”)
2012 (revised plan)	13	<u>Holt v. 2011 LRC</u> , 67 A. 3d 1211 (2013) (“ <u>Holt II</u> ”)

29. This year promises to be no exception. Already, House Republicans are insisting that the preliminary plan constitutes an unconstitutional partisan gerrymander; their next step is squarely ordained. *See, e.g.*, Jonathan Lai and Julia Terruso, “Pennsylvania Republicans are going on the attack against a new map for state House districts,” *The Philadelphia Inquirer* (Dec. 22, 2021) (““This map needs to go,’ Rep. Seth Grove (R., York) said at a news conference Tuesday. ‘They need to redo the entire thing to make sure we do not have unconstitutional districts done for partisan gerrymandering.’”) This Court does not need a weatherman to know which way the wind blows, and it need not wait for it to start raining before it secures an umbrella. The forecast is unmistakable.

30. The General Assembly, given its constitutional role, would ordinarily be the place to seek remedy. However, the House Majority leadership has made clear that they have no interest in accommodating these concerns, seeming to prefer causing a trainwreck to averting one.

31. Rep. Grove, chair of the House State Government Committee, has expressly stated his desire to carry the existing state legislative maps forward for an additional election cycle, while causing untold chaos as to Congressional elections in 2022:



Rep. Seth Grove - "the Architect" ✓
@RepGrove



We aren't moving the primary.

Remedies are already provided for:

(1) Previous courts ruled state legislators can run on their current maps.

(2) Federal law is clear: if no Congressional maps then all 17 districts will run statewide w/ the same nomination process as Gov.

8:08 AM · Dec 22, 2021 · Twitter for iPhone

12 Retweets 21 Quote Tweets 26 Likes

<https://twitter.com/RepGrove/status/1473641665315356674>

32. Similarly, Jonathan Lai, Philadelphia Inquirer data and democracy reporter, recounted his interview with PA House Majority Leader Kerry Benninghoff in a series of tweets on January 7, 2022:

As the clock ticks on getting political maps in place by the May primary, and the Dept of State warns of blown deadlines, PA House Majority Leader Kerry Benninghoff (R., Centre) says he's "not willing to entertain" moving the date right now.

When it comes to the state legislative maps, Benninghoff blames the delay on the redistricting commission's decision — which he and Senate Majority Leader Kim Ward (R., Westmoreland) opposed — to reallocate prison inmates to their previous addresses, which took time.

"I would say that this is kind of a manufactured crisis that says all of a sudden this is a major problem, we need to

make this date change,” Benninghoff said in an interview. “And I would say this is a result, actually, of different priorities.”

Benninghoff: “So at this point, I don’t see the need to be moving a primary, and I don’t plan on doing it.”

See <https://twitter.com/Elajjuh/status/1479594613631504385>

33. That same day, the Associated Press also captured the state of affairs as to the possibility of legislative action, and focused on the impact of inaction on election administration:

A court battle looks inevitable, potentially shortening the primary campaign period for candidates for Congress and the Legislature and squeezing the timeline for counties to finalize and mail out ballots....

“State government is failing us again,” said Forrest Lehman, Lycoming County's elections director....

Gov. Tom Wolf’s administration has asked for maps by Jan. 24, three weeks before state law allows the start of signature gathering on Feb. 15. From there, it is 13 weeks to the primary election — the maximum under state law — but even that is a tight window for counties, election officials say.

The 13 weeks are barely enough for courts to settle challenges to candidate petitions and for counties to update voter rolls, prepare voting machines and finalize, print and mail out ballots to voters requesting them, county officials say.

In 1992, a partisan stalemate over a new congressional map landed in court. The state Supreme Court kept the primary election date unchanged, but the court case compressed the 13-week period down to seven weeks.

Thirty years later, mail-in voting has made elections far more complicated and time-consuming to run, and election departments are seeing veteran administrators leave because of the growing pressures.

“Even if we have the full amount of time, it’s going to be rough,” said Marybeth Kuznik, Fayette County’s election director. “But if we have less time, it’s going to be extra rough.”

If protracted litigation happens, it would be better to delay the primary election date and avoid confusion among candidates and voters, Kuznik said.

Senate Majority Leader Kim Ward, R-Westmoreland, said moving the May 17 primary is a “last resort” while House Majority Leader Kerry Benninghoff, R-Centre, called it “unacceptable and, frankly, unnecessary.”

Al Schmidt, a former Philadelphia election commissioner who is now president and CEO of the good-government group Committee of Seventy, said lawmakers and judges have never been particularly sensitive to the time and predictability election administrators need to carry out an election.

“The courts and the Legislature just assume it will work out,” Schmidt said. “But it can have catastrophic consequences when it doesn’t work out, when it is rushed or when voters get the wrong ballot or when a name is misspelled on a ballot, especially in an environment where everyone assumes when a mistake occurs it is due to nefarious reasons.”

See Marc Levy, “Stalemates, court battles could squeeze Pennsylvania's primary election.” (Associated Press, January 7, 2022), accessed online via <https://www.wesa.fm/politics-government/2022-01-07/stalemates-court-battles-could-squeeze-pennsylvanias-primary-election>

34. According to public calendars, both chambers of the General Assembly are only in session from January 24-26 and February 7-9 before nomination petitions begin.

35. Under Article III, section 4 of the Pennsylvania Constitution, a bill must be considered on the floor on three separate legislative days, in each chamber, before it can become law. As such, the window for legislative action would be extremely compressed *even if* the General Assembly were inclined to act; alas, it is not.

36. This has provoked much anxiety among state legislative candidates from both parties, who among other concerns must meet durational residency requirements for the districts in which they will run in 2022, pursuant to Article II, section 5 of the State Constitution. *See, e.g.*, Ford Turner, “Pennsylvania redistricting plan puts incumbents, potential challengers in limbo: ‘It kind of has everyone nervous,’” Allentown Morning Call (Jan. 12, 2022), available online at

<https://www.mcall.com/news/pennsylvania/capitol-ideas/mc-nws-pa-redistricting-candidates-limbo-20220112-yts2vpzrjrc55nr3urzw5zsomu-story.html>:

Jose Rosado already knows the core issues for his possible state House campaign—property tax and education funding reform top the list—and now all he has to do is find out whether the district he hopes to represent will actually exist.

Rosado, the former mayor of Fountain Hill, has decided to run as a Democrat for the 22nd House District as portrayed on a preliminary redistricting map, covering Fountain Hill and parts of Allentown and Salisbury Township.

But there is no guarantee that map will become official.

Rosado’s home currently is in the 133rd district, which also includes part of the city of Bethlehem, the boroughs of

Coplay and Catasauqua and all or part of Hanover, Whitehall and Salisbury townships.

Should the final decision by the Legislative Reapportionment Commission leave him in the 133rd, Rosado said he will have to “speak to my supporters” before making a decision to seek election.

His uncertainty is shared by other candidates across the Lehigh Valley and state as the five-member commission continues to work toward new House and Senate maps that reflect demographic changes shown by the 2020 census.

“It is unsettling because everybody in Harrisburg is all atwitter about it,” said Republican Rep. Milou Mackenzie, who represents the 131st District. “It kind of has everyone nervous.” ...

Mackenzie, the first-term incumbent of the 131st district, is leaning toward running again. The final decision, she says, will happen “when the maps are done.”

Kevin Branco, a gym owner and Democrat who lost to Mackenzie by a 54% to 46% margin in 2020, plans to run again in the 131st, regardless of its final outline.

But redistricting uncertainty weighs heavily on his campaign planning.

The current district includes the boroughs of Emmaus, Coopersburg, Pennsburg, Red Hill and East Greenville, as well as all or part of a number of townships. The proposed map for the 131st removes Emmaus, but adds the borough of Hellertown.

“Without knowing what areas you are covering, it is hard to plan events, kickoff events, signing events,” Branco said. Concerning the proposed map, he added, “I am kind of excited about it. My business is in Hellertown.”...

Enid Santiago, a Latino candidate in Allentown in 2020, lost the Democratic primary in the 22nd District that year to incumbent Peter Schweyer by 55 votes out of 4,339 cast.

“Nobody can make a decision right now,” she said this week when asked about another run. “We are all in the same boat.”

37. This is a not only a crisis for candidates. The 67 county boards of elections need to begin preparing for this election, and voters have a right to know for whom they can vote, volunteer, and otherwise support through the circulation of nomination petitions and thereafter.

**THE PENNSYLVANIA JUDICIARY HAS RESPONDED TO SUCH
CIRCUMSTANCES BEFORE**

38. The Pennsylvania Judiciary has adjusted the election calendar in the past when the General Assembly has failed to take necessary action to protect constitutional values.

39. On November 15, 1991, the LRC adopted its Final Plan for the coming decade. Challenges were timely filed within 30 days, and the Supreme Court of Pennsylvania scheduled oral argument on twenty-three challenges on Saturday, January 25, 1992, hearing two additional matters on the briefs. *See In re 1991 Legislative Reapportionment Comm’n*, 609 A.2d 132, 530 Pa. 335, 342 (1992).

40. Nomination petitions, by law, began circulating on Tuesday, January 28, 1992, and were scheduled to run through Tuesday, February 18, 1992.

41. On Friday, February 14, 1992, seventeen days after nomination petitions had begun circulating under a cloud of uncertainty, the Court issued a *per curiam* order affirming that the Final Plan was lawful. As part of that Order, the Court extended the deadline for circulating nomination petitions by seventeen days, from

Tuesday, February 18, 1992, to Friday, March 6, 1992, with signatures gathered during the initial January 28-February 14 period also deemed timely. Id. at 340-41.

42. This was not the only alteration to the election calendar in 1992. Indeed, the second one was more sweeping.

43. As to federal redistricting, Pennsylvania's political branches were politically divided while the Commonwealth was required to eliminate two congressional seats. Because the branches failed to enact a congressional redistricting plan altogether, it forced Pennsylvania's judiciary to take responsibility for enacting a new constitutionally valid plan. *See Mellow v. Mitchell*, 607 A.2d 204, 530 Pa. 44 (Pa. 1992).

44. After the matter was initially filed in Commonwealth Court on the first day of nomination petitions (January 28, 1992), the Petitioners applied to Supreme Court of Pennsylvania to take plenary jurisdiction of the matter. The Supreme Court did so, designating President Judge David W. Craig of the Commonwealth Court to serve as a special Master. On March 10, 1992, the Court adopted Judge Craig's findings and recommendations in full. Id., 530 Pa. at 48-49.

45. In addition to taking responsibility for adopting a new plan itself—a remedy decidedly not at issue in this litigation—the Judiciary *also* adopted and imposed a new Elections Calendar for Congressional candidates and candidates for delegate to major party presidential nomination conventions based on the

recommendations of the Secretary of the Commonwealth, to which Judge Craig’s order largely deferred.²

46. The judicially-imposed calendar shifted the calendar for candidates to circulate nomination petitions in new congressional districts while keeping the primary date as scheduled on April 28. The Court declared void and invalid all signatures to nominating petitions for congressional candidates obtained before the date of the Order establishing new maps, and initiated a compressed period for circulating nomination petitions that same day. Instead of three weeks, candidates were provided with a nine-day window to circulate nomination petitions. *Id.* at 116-17.

47. The new deadlines were as follows:

Election Event	Original Dates	Revised Dates
Circulation of Nomination Petitions	January 28-February 18	March 10-19
Last day to file objections to nomination petitions	February 25	March 25
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions	February 28	March 31
Last day for Commonwealth Court to render decisions in cases involving objections to nomination petitions	March 5	April 3

² Such delegates are also elected based on congressional districts.

Id.³

48. These timing issues arose again during the 2011-12 redistricting cycle.⁴ The LRC adopted a preliminary plan on December 12, 2011, with challenges timely filed 30 days later. The Supreme Court heard oral argument on nine challenges on January 23, 2012, just five days after briefing was complete, and issued a *per curiam* order declaring the final plan unconstitutional just two days later, Wednesday, January 25, 2012. *See Holt I*, 38 A.3d at 720-21.

49. Because the initial LRC Plan was declared unconstitutional, the Court ordered that the existing maps remained in effect for the 2012 election. However, nomination petitions had begun the day before—January 24. Accordingly, as part of its *per curiam* order the Court extended its deadlines for nomination petitions by two days, and adjusted all subsequent deadlines accordingly:

Election Event	Original Dates	Revised Dates
Circulation of Nomination Petitions	January 24-February 14	January 24-February 16
Last day to file objections to nomination petitions	February 21	February 23
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions	February 24	February 27

³ Because the 1992 election predated the development of the Statewide Uniform Registry of Electors (the “SURE System”), it is possible nomination petition challenges may be handled more efficiently today than then. *See* 25 Pa.C.S.A. § 1222 *et seq.*, enacted as Act 3 of 2002.

⁴ In 2002, the Supreme Court heard oral argument on all appeals on February 5 and issued its *per curiam* order affirming the Final Plan on February 15, just before the start of nomination petition circulation on February 19.

Last day for Commonwealth Court to render decisions in cases involving objections to nomination petitions	February 29	March 2
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Holt I, 38 A.3d at 716.

50. As part of its subsequent opinion explaining why it had declared the LRC Plan unconstitutional, the Court explained its adjustments to the calendar as follows:

Of course, the Court was cognizant that the LRC's timeline in adopting a Final Plan had ensured that the appeals would carry into the period when nomination petitions could begin to be circulated, and that any mandate other than outright denial or dismissal of the appeals could cause disruption of that process. Therefore, the *per curiam* order also was careful to adjust the primary election schedule and, consistently with the order we entered on February 14, 1992, the last time a presidential primary occurred in a reapportionment year, we directed that petition signatures collected before our mandate issued would be deemed valid as to timeliness. See Order, 1/25/12 (*per curiam*). Our adjustment of the primary election calendar does not alter the discretion vested in the Commonwealth Court, which will be tasked in its original jurisdiction with hearing any objections to nominating petitions. The Election Code provides a very restrictive time schedule, specifically including a ten day cut-off for hearings and a fifteen day deadline for decisions. 25 P.S. § 2937. However, this Court recognized that appeals of this nature entail the “exercise of purely judicial functions.” In re Nomination Petition of Moore, 447 Pa. 526, 291 A.2d 531, 534 (Pa.1972). Thus, as it respects the judicial function, the Election Code's deadlines are understood in this context as “directory,” although the deadlines and requirements of the Code will remain mandatory as to petitioners. See also Mellow v. Mitchell, 530 Pa. 44, 607 A.2d 204, 224 (Pa. 1992) (same);

In re Shapp, 476 Pa. 480, 383 A.2d 201, 204 (Pa. 1978)
(same).

Id. at 721 n. 10.

51. Most recently, the Supreme Court of Pennsylvania struck down the existing congressional plan as unconstitutional in 2018, requiring adjustments to the nomination petition calendar. *See League of Women Voters v. Commonwealth*, 181 A. 3d 1083 (Pa. 2018) (“LWV II”).

52. By order dated January 22, 2018, the Court declared the existing plan unconstitutional; on February 19, 2018, after the political branches were unable to come to agreement on a new plan, the Court adopted a remedial plan.

53. Originally, nomination petitions for congressional candidates were supposed to have commenced on February 13, ending on March 6. Instead, as part of its February 19, 2018 order, the Supreme Court of Pennsylvania enacted an adjusted calendar as to congressional candidates only, shifting all deadlines by two weeks while keeping the existing primary date in place:

Election Event	Original Dates	Revised Dates
Circulation of Nomination Petitions	February 13-March 6	February 27-March 20
Last day to file objections to nomination petitions	March 13	March 27
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions	March 16	March 30
Last day for Commonwealth Court to render decisions in cases involving objections to nomination petitions	March 21	April 4

Id. at 1121.

CLAIM FOR RELIEF

COUNT I

Legislative Malapportionment

Violation of Free and Equal Elections Clause Pa. Const., Art. I, § 5

Violation of Pa. Const., Art. II, § 16

54. Petitioners reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

55. The Pennsylvania Constitution’s Free and Equal Elections Clause provides: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const., Art. I, § 5. This clause “should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people’s power to do so.” League of Women Voters v. Commonwealth, 178 A. 3d 737, 814 (Pa. 2018) (“LWV I”).

56. The Free and Equal Elections Clause “establishe[s] a critical ‘leveling’ protection in an effort to establish the uniform right of the people of this Commonwealth to select their representatives in government.” Id. at 807.

57. The “equality” prong of the Free and Equal Elections Clause requires that voting districts be drawn “by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some

shall not have more votes than others, and that all shall have an equal share.” Id. at 809 (quoting Patterson, 60 Pa. at 75). Thus, any scheme that “has the effect of impermissibly diluting the potency of an individual’s vote for candidates for elective office relative to that of other voters will violate the guarantee of ‘free and equal’ elections afforded by Article I, Section 5.” Id.

58. In its recent decision in Pa. Democratic Party v. Boockvar, 238 A.3d 345 (Pa. 2020), the Supreme Court unanimously joined in Part II of now-Chief Justice Baer’s opinion in recognizing the importance of this provision:

The broad text of this specific provision “mandates clearly and unambiguously, and in the broadest possible terms, that *all* elections conducted in this Commonwealth must be ‘free and equal.’” League of Women Voters v. Commonwealth, 645 Pa. 1, 178 A.3d 737, 804 (Pa. 2018) (emphasis in original). Stated another way, this clause was “specifically intended to equalize the power of voters in our Commonwealth’s election process[.]” Id. at 812.

Id. at 355.

59. This understanding is also embodied directly in the Pennsylvania Constitution. Article II, section 16 requires that “The Commonwealth shall be divided into 50 senatorial and 203 representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable.”

60. Petitioners herein currently reside in overpopulated districts. If the 2011 state legislative redistricting plan is allowed to persist despite a constitutional Final Plan having been adopted by the LRC, voters will remain in districts with significantly disparate populations, causing voters in underpopulated districts to have

more “potent” votes compared to voters, like Petitioners, who live in districts with comparatively larger populations.

61. Therefore, to the extent possible, the 2022 election calendar should be altered to accommodate the Supreme Court’s consideration of challenges to the LRC Final Plan. If the LRC has adopted a constitutional Final plan, it should be allowed to take effect this year.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- a. Enjoin Respondents, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Pennsylvania’s state legislative reapportionment until such time the Supreme Court of Pennsylvania has entered an order giving the 2022 LRC Final Plan the force of law, or has struck down the 2022 LRC Final Plan as unconstitutional.
- b. Adopt a new Elections Calendar which accommodates the Supreme Court of Pennsylvania’s need to adjudicate challenges to the 2022 LRC Final Plan,
- c. Award Petitioners their costs, disbursements, and reasonable attorneys’ fees; and

d. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

By:  _____

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Attorney for Petitioners

Dated: January 20, 2022

NOTICE TO PLEAD

TO: Acting Secretary Leigh Chapman
Pennsylvania Department of State
Office of the Secretary
302 North Office Building, 401 North Street
Harrisburg, PA 17120

Director Jessica Mathis
Pennsylvania Bureau of Election Services and Notaries
500 North Office Building, 401 North Street
Harrisburg, PA 17120

You are hereby notified to file a written response to the enclosed Petition for Review within thirty (30) days from service hereof or a judgment may be entered against you.

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Petition for Review to be served upon the following parties and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 1514 and 121:

By Certified Mail:

Acting Secretary Leigh Chapman
Pennsylvania Department of State
Office of the Secretary
302 North Office Building
401 North Street
Harrisburg, PA 17120

Director Jessica Mathis
Pennsylvania Bureau of Election Services and Notaries
500 North Office Building
401 North Street
Harrisburg, PA 17120

By Certified Mail and PACFile:

Office of Attorney General
Strawberry Square, 16th Floor
Harrisburg, PA 17120



Adam C. Bonin, Esq.

Dated: January 20, 2022