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Governor Tom Wolf*

IN THE SUPREME COURT OF PENNSYLVANIA

CAROL ANN CARTER *et al.*,

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.

No. 7 MM 2022

**INTERVENOR-RESPONDENT GOVERNOR TOM WOLF'S ANSWER TO
PETITIONERS' APPLICATION FOR EXTRAORDINARY RELIEF
UNDER 42 PA. C.S. § 726 AND PA. R.A.P. 3309**

Intervenor-Respondent Governor Tom Wolf (the “Governor”) submits this Answer to the *Carter* Petitioners’ Application for Extraordinary Relief Under 42 Pa.C.S. § 726 and Pa. R.A.P. 3309.

The Governor agrees that this Court should exercise extraordinary jurisdiction over the consolidated congressional redistricting cases pending in the Commonwealth Court (the “Consolidated Actions”). As set forth in more detail below, there have been several important developments since January 10, 2022, when this Court denied without prejudice the initial extraordinary-jurisdiction applications filed by the *Carter* and *Gressman* Petitioners.¹ First, there is no longer any prospect that the political branches will timely enact a new district plan, and it is clear that the judiciary will need to adopt one. Second, there is insufficient time for this Court to await a decision from the Commonwealth Court, wait for appeals to be filed, and then issue a ruling that might entail a remand for further lower-court proceedings and a possible subsequent appeal; invocation of this Court’s plenary jurisdiction is necessary to ensure that a final, new map can take legal

¹ On December 21, 2021, before Governor Wolf applied to intervene in the Consolidated Actions, the Petitioners in 464 MD 2021 and 465 MD 2021 filed separate applications seeking this Court’s exercise of extraordinary jurisdiction. *See* Docket Nos. 141 MM 2021 and 142 MM 2021. The Court denied both applications “without prejudice to Petitioners to reapply for similar relief in this Court, as future development may dictate.” *See* Order dated January 10, 2022, No. 141 MM 2021; Order dated January 10, 2022, No. 142 MM 2021. Justices Wecht and Donohue dissented from the denial of the applications. The *Carter* Petitioners have now filed a second application for extraordinary jurisdiction.

effect as soon as possible. Third, the passage of each day has added urgency to the need for clarity about the 2022 election calendar,² which only this Court is in a position to resolve.

As these developments demonstrate, the Consolidated Actions unmistakably involve issues “of immediate public importance”—and present a compelling case for the exercise of extraordinary jurisdiction. 42 Pa.C.S. § 726.

I. EXTRAORDINARY JURISDICTION IS WARRANTED BECAUSE THERE IS NO LONGER A PROSPECT THAT A NEW MAP WILL BE TIMELY ENACTED THROUGH THE LEGISLATIVE PROCESS, AND THIS CASE PRESENTS IMPORTANT CONSTITUTIONAL ISSUES UNIQUELY WITHIN THE PROVINCE OF THIS COURT

At the time of this Court’s January 10, 2022 Order, the Pennsylvania Senate had not yet passed a redistricting plan, and there was still a prospect that the political branches would be able to enact a redistricting plan through the normal legislative process. Unfortunately, however, rather than passing an evenhanded map commanding bipartisan support, on January 24, 2022, the General Assembly rammed through, along mostly partisan lines,³ a map that fundamentally fails the

² As discussed below, *see infra* note 6 and Section III, under the current calendar, the first day for circulating and filing nomination petitions is February 15, 2022, only two weeks from now.

³ The Pennsylvania Senate voted along party lines. *See* https://www.legis.state.pa.us/cfdocs/legis/RC/Public/rc_view_action2.cfm?sess_yr=2021&sess_ind=0&rc_body=S&rc_nbr=429. In the House of Representatives, all Democrats and two Republicans voted against HB 2146. *See*

test of fairness. *See* HB 2146, 2021-2022 Reg. Sess. As the Governor had previously made clear, that map is unacceptable; he could not, in good conscience, sign it into law. Accordingly, on January 26, 2022, the Governor vetoed the General Assembly’s bill for failing to “deliver on the Pennsylvania Constitution’s guarantee of free and equal elections.”⁴

Given these developments, it is now clear that the executive and legislative branches have reached an impasse, and that the judiciary will need to adopt a new congressional district plan. Although the importance of the issues has not changed since this Court last considered whether to exercise extraordinary jurisdiction, the Court’s role in the redistricting process has sharpened. As the Commonwealth Court said in concluding the hearing below: “[T]his is a critical matter affecting the constitutional rights of the people of Pennsylvania.” (Exhibit A, Hr’g. Tr. 1121:4-6.) And as this Court explained in *League of Women Voters v. Commonwealth*, “matters concerning the proper interpretation and application of our Commonwealth’s organic charter are at the end of the day for this Court—and only this Court.” 178 A.3d 737, 822 (Pa. 2018).

https://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc_view_action2.cfm?sess_yr=2021&sess_ind=0&rc_body=H&rc_nbr=708.

⁴ *See* Veto Message, Office of the Governor of the Commonwealth of Pennsylvania (Jan. 26, 2022), <https://www.governor.pa.gov/wp-content/uploads/2022/01/20220126-HB-2146-Veto-Message.pdf>.

Moreover, as crystallized by the hearing conducted by the Commonwealth Court last week, this case presents important constitutional issues that the *League of Women Voters* Court expressly anticipated but did not need to resolve. *League of Women Voters* held that the Pennsylvania Constitution’s Free and Equal Elections Clause “mandates” what a “healthy representative democracy” requires—namely, “that all voters have an equal opportunity to translate their votes into representation.” *Id.* at 804, 814; *see also id.* at 814 (explaining that the Clause “provides the people of this Commonwealth an equally effective power to select the representative of [their] choice, and bars the dilution of the people’s power to do so”). The Court observed that there are well-established “neutral ‘floor’ criteria”—including compactness, contiguity, respect for the boundaries of political subdivisions, and maintenance of population equality among congressional districts—that help advance the goal of fairness. *Id.* at 817. But these criteria are just that—a floor. *League of Women Voters* recognized that a district plan could satisfy these criteria and “nevertheless operate to unfairly dilute the power of a particular group’s vote for a congressional representative,” such as by entrenching partisan advantage. *Id.*

Because *League of Women Voters* could “be resolved solely on the basis of consideration of the degree to which neutral criteria were subordinated to the pursuit of partisan political advantage,” the Court did not have to “address at th[at]

junction the possibility” of a map that satisfied the traditional floor criteria but nonetheless incorporated a structural partisan bias—and therefore failed to provide all voters an equal opportunity to elect their representative of choice. *Id.* at 817. But that is an issue squarely presented by this case. In *League of Women Voters*, the Court was considering whether to invalidate an enacted plan on the grounds that it was so unfair that it violated the Pennsylvania Constitution. Here, by contrast, there is no enacted plan; rather, the judiciary is reviewing many plans with the goal of adopting a map that *best* realizes “the constitutional standards in all pertinent respects.” *Mellow v. Mitchell*, 607 A.2d 204, 218 (Pa. 1992). Put differently, the Court is tasked with determining which plans satisfy the neutral criteria “floor” (step one), *see League of Women Voters v. Commonwealth*, 181 A.3d 1083, 1087 (Pa. 2018), and then identifying which among those plans is the least likely to cause systematic vote dilution (step two), *i.e.*, which plan best realizes the goal of fundamental fairness and avoids entrenching partisan advantage.

The evidence in this case has confirmed what *League of Women Voters* predicted: Satisfaction of the neutral “floor” criteria is not a sufficient guarantor of fairness. While several of the plans proposed by the parties and *amici* rate as very good or excellent under the traditional criteria, not all of them are fair. To the contrary, as convincingly shown by the testimony of multiple expert witnesses,

several of those plans would entrench a profound partisan bias—leading to election outcomes in which a party earning less than 50% of the votes could nonetheless win, on a systematic basis, more than 50% of the congressional seats.⁵

In sum, it is now clear that this case calls for the Court to build on the framework established in *League of Women Voters*, and to resolve constitutional questions with profound implications for the health of Pennsylvania’s democracy and the responsiveness and accountability of Pennsylvanians’ elected representatives. The public importance of this case cannot be overstated.

II. THE COURT SHOULD EXERCISE PLENARY JURISDICTION TO ENSURE THAT A FINAL CONGRESSIONAL DISTRICT PLAN IS IN PLACE AS SOON AS POSSIBLE

The need to resolve these issues of public importance is undeniably “immediate.” 42 Pa.C.S. § 726. When the Court previously denied the applications for extraordinary jurisdiction without prejudice, the first date in the election calendar was more than a month away. Now, that date, which is contingent on a

⁵ Compare Dr. Duchin, Response Report on Congressional Districting Plans in Pennsylvania, at 2–3 (identifying plans that achieve excellence under the traditional criteria), *with id.* at 4–5 (assessing the relative partisan fairness of the various plans). Dr. Duchin’s Response Report was filed as an attachment to Governor Wolf’s Responsive Brief in Support of Proposed 17-District Congressional Redistricting Plan (filed Jan. 26, 2022), and was admitted into evidence at the Commonwealth Court hearing held on January 27 and 28, 2022. (See Exhibit A, Hr’g Tr. 1118:16–24.)

final congressional districting plan being in place, is in two weeks.⁶ Simply put, too much time has elapsed for the Court to conduct traditional appellate review. There is not a sufficient opportunity for the Court to review the Commonwealth Court's decision in the Consolidated Actions, remand for further proceedings (if necessary), and then decide any subsequent appeal following remand. Indeed, the mere possibility of a remand injects far too much uncertainty into the Commonwealth's administration of the 2022 primary election.⁷ Given the late hour, the Court should exercise extraordinary jurisdiction so that it can immediately and finally adopt a 17-district congressional redistricting plan, without lost time or the need to conduct further proceedings.

⁶ Under the current election schedule, the period to circulate and file nomination petitions begins in two weeks, on February 15, 2022. 25 P.S. § 2868. To be eligible to sign a congressional candidate's nomination petition, an elector must be a resident of the congressional district the candidate seeks to represent. *Id.* Accordingly, a new district map must be in place, so that the boundaries of the new congressional districts are known to candidates, before the circulation of nomination petitions can begin.

⁷ Even if the election calendar is modified and some deadlines postponed, minimizing disruption to the election process requires that a congressional redistricting plan be adopted as soon as possible, so that the Department of State and county boards of elections can update registration information, and candidates and voters can know the boundaries of the new districts.

III. CALENDAR ISSUES AFFECTING BOTH THE CONGRESSIONAL PRIMARY ELECTION AND OTHER PRIMARY ELECTIONS PROVIDE A FURTHER BASIS FOR EXERCISING EXTRAORDINARY JURISDICTION

Other timing concerns also strongly support exercising extraordinary jurisdiction. During the evidentiary hearing in the Consolidated Actions, the Commonwealth Court stated that although it would entertain arguments for modifying the election calendar, it would only address the calendar for the *congressional* redistricting process, and would not address deadlines for the *state legislative* redistricting process.⁸ (*See* Exhibit A, Hr’g Tr. 1021:9–22.) Although the Commonwealth Court’s approach is understandable given the scope of this proceeding, it also risks a result in which the congressional primary is scheduled for a different date than the state legislative primary and/or the primary election for statewide offices. As the Governor and Department of State have explained, having

⁸ As the former Acting Secretary of the Commonwealth previously explained, the state legislative redistricting process has been significantly delayed. As of the date of this filing, the Legislative Reapportionment Commission has not yet issued a final legislative redistricting plan. Once it does so, any aggrieved party will have 30 days to file an appeal to this Court. PA. CONST. art. I, § 17(d). This delay requires modification of the primary election calendar “by either the legislature or the Supreme Court.” Letter from Veronica W. Degraffenreid, Acting Secretary of the Commonwealth, to the Honorable Mark A Nordenberg, et al. (Dec. 21, 2021), <https://www.dos.pa.gov/about-us/Documents/statements/2021-12-21-LRC-Letter.pdf> (“identify[ing] the problems we will face if no measures are undertaken by either the legislature or the Supreme Court to mitigate the[] very serious risks to administration of the upcoming election cycle” posed by the reapportionment process schedule).

separate primaries would cause confusion, likely depress voter turnout, and cost Pennsylvania tens of millions of dollars. Rather, if at all possible, “we should not divide the primary and we should end up with a primary date ultimately that will accommodate both redistricting processes,” *i.e.*, congressional and state legislative redistricting. (*Id.* at 1096:2–11; *see also* Exhibit B, Affidavit of Jonathan Marks.⁹)

Under the current schedule, the period for circulating and filing nomination petitions begins on February 15, 2022. *See* 25 P.S. § 2868. Candidates in both congressional and state legislative races need to know the boundaries of their districts before that process begins. *See supra* note 6. To avoid the confusion that arose in 2012, when the calendar was not clarified until after the filing period had begun, *see Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711, 716, 722 (Pa. 2012), imminent action is required. Thus, the Court should invoke its plenary jurisdiction so that it may address the entire election calendar promptly, simultaneously, and harmoniously—and minimize disruption, confusion, and expense.

WHEREFORE, the Governor respectfully requests that the Application for Exercise of Extraordinary Jurisdiction be granted.

⁹ The Commonwealth Court generally admitted the Marks Affidavit into evidence but sustained a relevance objection to paragraphs 18–26, which discuss the interplay between the calendar for congressional redistricting and state legislative redistricting. (*See* Exhibit A, Hr’g Tr. 1022:24–1023:8.)

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: February 1, 2022

By: /s/ Robert A. Wiygul
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*Counsel for Intervenor-Respondent Governor
Tom Wolf*

Exhibit A

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IN THE COMMONWEALTH COURT OF
PENNSYLVANIA

* * * * *

Carol Ann Carter; *
Monica Parrilla; * CASES
Rebecca Poyourow; * CONSOLIDATED
William Tung; *
Roseanne Milazzo; * No.
Burt Siegel; * 464 MD 2021
Susan Cassanelli; *
Lee Cassanelli; *
Lynn Wachman; *
Michael Guttman; *
Maya Fonkeu; *
Brady Hill; *
Mary Ellen Balchunis; *
Tom DeWall; *
Stephanie McNulty; *
And Janet Temin, *
Petitioners *

V.

Vernica Degraffenreid, *
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 *

BEFORE: PATRICIA A. MCCULLOUGH, JUDGE

CONTINUED HEARING: Friday, January 28,

2022

9:30 a.m.

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by the certifying agency

1 Philip T. Gressman; *

Ron Y. Donagi; *

2 Kristopher R. Tapp; *

Pamela Gorkin; *

3 David P. Marsh; *

James L. Rosenberger; *

4 Amy Meyers; *

Eugene Boman; *

5 Gary Gordojn; *

Liz McMahan; * No.

6 Timothy G. Freman; * 465 M.D. 2021

And Garth Isakk, *

7 Petitioners *

V. *

8 Vernica Degraffenreid, *

in her official *

9 capacity as the Acting *

Secretary of the *

10 Commonwealth of *

Pennsylvania; and *

11 Jessica Mathis, in her *

Official capacity as *

12 Director for the *

Pennsylvania Bureau of *

13 Election Services and *

Notaries, *

14 Respondents *

* * * * *

15
16
17

18 LOCATION: Pennsylvania Judicial Center

19 601 Commonwealth Avenue

20 Suite 1500

21 Harrisburg, PA 17120

22 WITNESSES: Keith Naughton, Devin

23 Caughey

24

25 Reporter: Nicole Montagano

06:29:20 1 Okay.

06:29:20 2 You said paragraphs 18
06:29:22 3 through 26.

06:29:23 4 Correct?

06:29:24 5 ATTORNEY TUCKER:

06:29:24 6 That's correct, Your
06:29:32 7 Honor.

06:29:32 8 JUDGE McCULLOUGH:

06:29:32 9 So I note for the
06:29:33 10 record, as paragraphs 18 through 26 as
06:29:33 11 noted in paragraph 20 of the affidavit
06:29:40 12 reference litigation that is currently
06:29:41 13 pending in this Court and is not
06:29:43 14 before this particular Court at this
06:29:45 15 time, this Judge in this trial, so the
06:29:49 16 Court would not include those
06:29:51 17 paragraphs simply because there's
06:29:53 18 pending litigation and cannot address
06:29:57 19 the issues, which will be addressed in
06:29:59 20 that case which you cite as David, et
06:30:03 21 al. versus Chapman at Number 22 MD
06:30:06 22 2022.

06:30:07 23 ATTORNEY WIYGUL:

06:30:08 24 Thank you, Your Honor.

06:30:08 25 And I understand the

06:30:09 1 Court's ruling. I'd just like to note
06:30:12 2 for the record, I understand the Court
06:30:14 3 is sustaining the grounds other than
06:30:15 4 hearsay. To the extent there was a
06:30:17 5 hearsay objection, I just want to note
06:30:19 6 that we have Jonathan Marks here and
06:30:23 7 he's prepared to testify.

06:30:23 8 JUDGE McCULLOUGH;

06:30:23 9 I didn't hear him say a
06:30:24 10 hearsay objection on the record.

06:30:25 11 ATTORNEY TUCKER:

06:30:26 12 We're not objecting on
06:30:27 13 hearsay. It's on relevance grounds.

06:30:29 14 JUDGE McCULLOUGH:

06:30:30 15 It's on relevance and
06:30:33 16 the fact that there is pending
06:30:34 17 litigation.

06:30:35 18 ATTORNEY TUCKER:

06:30:35 19 Correct, Your Honor.

06:30:37 20 ATTORNEY WIYGUL:

06:30:37 21 And I understand that
06:30:38 22 the Court is sustaining.

06:30:39 23 JUDGE McCULLOUGH:

06:30:40 24 I'm sustaining on the
06:30:41 25 relevance and the fact that

06:30:43 1 paragraph 20 of your affidavit clearly
06:30:45 2 states pending litigation,
06:30:50 3 paragraph 18 through 26 not in front
06:30:52 4 of this Court at this time. So it
06:30:54 5 would be inappropriate for this Court,
06:30:56 6 one, to hear anything on that, and
06:30:58 7 two, on the relevance that matter is
06:31:00 8 not in particular before us.

06:31:02 9 ATTORNEY WIYGUL:

06:31:03 10 And I understand the
06:31:03 11 Court's ruling. Thank you.

06:31:04 12 And I understand that
06:31:06 13 the affidavit has been marked for the
06:31:07 14 record.

06:31:07 15 JUDGE McCULLOUGH:

06:31:08 16 And it's so admitted
06:31:09 17 with those exceptions.

06:31:12 18 ATTORNEY WIYGUL:

06:31:13 19 Thank you, Your Honor.

06:31:13 20 JUDGE McCULLOUGH:

06:31:14 21 Thank you very much for
06:31:14 22 providing it, Counsel.

06:31:14 23 Okay.

06:31:18 24 Anything else? I don't
06:31:19 25 want to assume that we don't have

08:01:16 1 ATTORNEY WIYGUL:

08:01:16 2 Yes. But I would just
08:01:18 3 say but at the end of the day
08:01:19 4 we do feel and the Governor
08:01:20 5 also feels very strongly we
08:01:21 6 should not divide the primary
08:01:23 7 and we should end up with a
08:01:26 8 primary date ultimately that
08:01:30 9 will accommodate both
08:01:31 10 redistricting processes that
08:01:32 11 are currently still proceeding.

08:01:34 12 JUDGE MCCULLOUGH:

08:01:34 13 Thank you, Mr. Wiygul.

08:01:36 14 ATTORNEY WIYGUL:

08:01:37 15 Thank you.

08:01:37 16 JUDGE MCCULLOUGH:

08:01:39 17 And now we will hear
08:01:39 18 from counsel for Petitioner
08:01:41 19 Gressman. I'm not sure who's
08:01:44 20 arguing.

08:01:44 21 ATTORNEY RING-AMUNSON:

08:01:52 22 Thank you, Your Honor.
08:01:52 23 Jessie Amunson for the Math and
08:01:56 24 Science Petitioners. I want to
08:01:58 25 begin by just thanking the

08:19:15 1 ATTORNEY GORDON:

08:19:15 2 Your Honor, we certainly
08:19:16 3 don't dispute that if necessary
08:19:18 4 the Court has the authority to
08:19:20 5 change the deadlines, including
08:19:22 6 the primary deadline. We don't
08:19:23 7 think it will be necessary,
08:19:25 8 given the time here. And we
08:19:27 9 hope that it's not.

08:19:30 10 JUDGE MCCULLOUGH:

08:19:30 11 Thank you.

08:19:30 12 ATTORNEY GORDON:

08:19:30 13 Thank you.

08:19:30 14 JUDGE MCCULLOUGH:

08:19:31 15 All right.

08:19:31 16 The Court now would just
08:19:33 17 note a few things for the
08:19:35 18 record. That all maps, expert
08:19:37 19 reports, including files
08:19:38 20 uploaded to the Court in accord
08:19:42 21 with the Court's Order in a
08:19:44 22 timely fashion are already part
08:19:46 23 of the record and are so
08:19:48 24 admitted.

08:19:50 25 Doctor Burnell and

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08:21:47 3
08:21:48 4
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08:21:59 8
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as expedited manner as possible.

The Court --- I appreciate that this is a critical matter affecting the constitutional rights of the people of Pennsylvania. So I thank you all. I think we are finished. So thank you very much.

COURT CRIER HOLLAND:

The Commonwealth Court is now adjourned.

* * * * *

HEARING CONCLUDED

* * * * *

—

Exhibit B

HANGLEY ARONCHICK SEGAL
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Counsel for Respondents

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;
JESSICA MATHIS, in her official capacity as Director for
the Pennsylvania Bureau of Election Services and Notaries,

Respondents.

No. 464 MD 2021

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.

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.

No. 465 MD 2021

AFFIDAVIT OF JONATHAN MARKS

Jonathan Marks, being duly sworn, deposes and says:

1. I am the Deputy Secretary for Elections and Commissions for the Commonwealth's Department of State (the "Department").
2. I was appointed to the position of Deputy Secretary for Elections and Commissions in February 2019.
3. I have been with the Department since 1993.
4. Prior to being appointed Deputy Secretary for Elections and Commissions in 2019, I served as Commissioner of the Bureau of Commissions, Elections and Legislation (the "Bureau") starting in October 2011.

5. From 2008 to 2011, I served as the Chief of the Division of the Statewide Uniform Registry of Electors.

6. Prior to that, from 2004 to 2008, I served as the Chief of the Division of Elections and Precinct Data with the Bureau.

7. In my current role, I am responsible for overseeing the day-to-day operations of election administration within the Department.

8. Since I became the Commissioner of the Bureau in 2011, I have supervised the administration of the Department's duties in more than 20 regularly-scheduled elections and over 50 special elections.

9. The next congressional primary is scheduled for May 17, 2022.

10. The current timeline of deadlines leading up to the May 17, 2022 primary is as follows:

- a. The first day before the primary election to circulate and file nomination petitions is February 15, 2022. (*See* 25 P.S. § 2868.)
- b. The last day before the primary election to circulate and file nomination petitions is March 8, 2022. (*See* 25 P.S. § 2868.)
- c. The first day before the primary election to circulate and file nomination papers is March 9, 2022. (*See* 25 P.S. § 2913(b).)

- d. The last day before the primary election for candidates who filed nomination petitions to withdraw their candidacy is March 23, 2022. (*See* 25 P.S. § 2874.)
- e. The last day before the primary election for the County Boards of Elections to send remote military-overseas absentee ballots is March 28, 2022. (*See* 25 Pa.C.S. § 3508(b)(1).)
- f. The last day before the primary election for the County Boards of Elections to send all remaining military-overseas absentee ballots is April 1, 2022. (*See* 52 U.S.C. § 20302(a)(8)(A); 25 Pa.C.S. § 3508(a)(1).)
- g. The last day before the primary election for voters to register is May 2, 2022. (*See* 25 P.S. § 3071.)
- h. The last day before the primary election to apply for a mail-in or civilian absentee ballot is May 10, 2022. (*See* 25 P.S. § 3146.2a(a).)
- i. The last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots for the primary election is May 17, 2022. (*See* 25 P.S. § 3146.6(a).)
- j. Pennsylvania's 2022 general primary election is scheduled for May 17, 2022. (*See* 25 P.S. § 2753(a).)

- k. The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election is May 24, 2022. (*See* 25 Pa.C.S. § 3511(a).)
- l. The last day to circulate and file nomination papers for the general election is August 1, 2022. (*See* Consent Decree, *Hall v. Davis*, No. 84-1057 (E.D. Pa. June 14, 1984).)
- m. The last day for candidates who were nominated by nomination papers to withdraw their candidacy for the general election is August 8, 2022. (*See* 25 P.S. § 2938(b).)
- n. The last day for candidates who were nominated at the primary to withdraw their candidacy for the general election is August 15, 2022. (*See* 25 P.S. § 2938(a).)
- o. The last day before the general election for the County Boards of Elections to send remote military-absentee ballots is August 30, 2022. (*See* 25 Pa.C.S. § 3508(b)(1).)
- p. The last day before the general election for the County Boards of Elections to send all remaining military-overseas absentee ballots is September 23, 2022. (*See* 52 U.S.C. § 20302(a)(8)(A); 25 Pa.C.S. § 3508(a)(1).)

- q. The last day before the general election for voters to register is October 24, 2022. (*See* 25 P.S. § 3071.)
 - r. The last day before the general election for voters to apply for a mail-in or civilian absentee ballot is November 1, 2022. (*See* 25 P.S. § 3146.2a(a).)
 - s. The last day before the general election for County Boards of Elections to receive voted mail-in and civilian absentee ballots is November 8, 2022. (*See* 25 P.S. § 3146.6(a).)
 - t. Pennsylvania’s 2022 general election is scheduled for November 8, 2022. (*See* Pa. Const. Art. VII, § 2; 25 P.S. § 2751.)
 - u. The last day for County Boards of Elections to receive voted military-overseas ballots for the general election is November 15, 2022. (*See* 25 Pa.C.S. § 3511(a).)
11. All of the deadlines set forth above are required by federal or state law.
12. The current elections schedule gives the Counties ten weeks to prepare for the primary election, between (a) the last date before the primary election for circulating and filing nomination petitions (currently March 8); and (b) the primary election date (May 17).

13. Based on my experience, the Counties could fully prepare for the congressional primary election in eight weeks.

14. As noted above, the earliest deadline on the current election calendar is February 15, 2022, the first day for circulating and filing nomination petitions. *See supra*, ¶ 10(a).

15. Ideally, the Department would have at least three weeks of preparation time before the first date for circulating and filing nomination petitions to ensure efficient election administration, allow for timely notice to candidates, and permit proper implementation of the new congressional districts. In particular, the Department needs sufficient time prior to the start of nomination petition filing to update its Elections and Campaign Finance system, and the Counties need sufficient time to update the Statewide Uniform Registry of Electors (“SURE”) system, to reflect the new congressional map.

16. However, with the addition of staff and increased staff hours, it would be possible for the Department to complete its preparations for the congressional election in two weeks instead of three.

17. Should the Court determine that it is necessary to modify existing deadlines, the Department will make every effort to comply with any schedule that the Court puts in place.

18. It should be noted, however, that the General Assembly election process has been significantly delayed, and it appears inevitable that the calendar for the legislative elections will also require modification.

19. Specifically, after the belated transmission of census data from the U.S. Commerce Department last summer, the Legislative Reapportionment Commission (“LRC”) conducted public hearings and prepared a legislative redistricting plan, but has not yet adopted a final plan. Moreover, while the LRC is expected to adopt a final plan in the near future, challenges to the final plan may be filed with the Supreme Court of Pennsylvania during the ensuing 30 days. In the past, these challenges have taken weeks, at a minimum, to resolve.

20. In fact, litigation regarding the legislative election has already been filed, even before the LRC has adopted a final redistricting plan. On January 20, 2022, a lawsuit was filed with this Court seeking to enjoin the 2022 legislative election from running on the prior malapportioned districts, and also seeking adjustments to the legislative election calendar. *See David et al. v. Chapman et al.*, No. 22 M.D. 2022 (Pa. Commw. Ct.).

21. The LRC’s final plan will assume the force of law only after the Supreme Court has finally ruled against all appeals (or after the last day for filing an appeal has passed with no appeal taken).

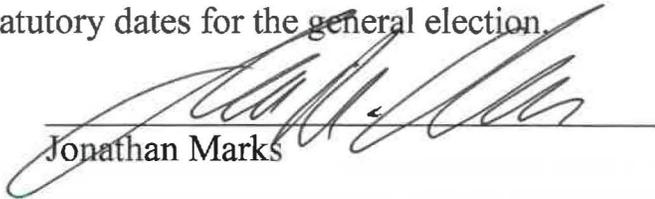
22. It is the Department's strongly-held preference that any decision about the Congressional primary be made in consideration of the legislative election timeline.

23. For administrative and cost-saving reasons, the Department prefers consistent deadlines for all races leading up to the primaries.

24. As a result of the delays in the legislative election process, it is also possible that postponement of the primary election for General Assembly seats may be necessary.

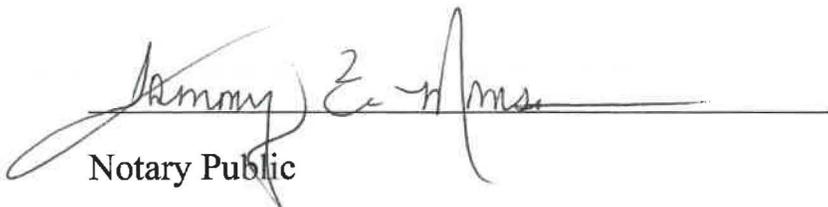
25. Should any court determine that postponing a primary is necessary, for administrative and cost-saving reasons, the Department's preferred option would be postponement of the primary elections for all offices.

26. Up to a point, it is possible to postpone the primary elections for all races and not interfere with other statutory dates for the general election.


Jonathan Marks

Sworn to and subscribed before me

This 28th day of January, 2022


Notary Public

Commonwealth Of Pennsylvania - Notary Seal
Tammy E. Morrison, Notary Public
Dauphin County
My Commission Expires March 31, 2023
Commission Number 1261526

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

Dated: February 1, 2022

/s/ Robert A. Wiygul
Robert A. Wiygul