

**IN THE SUPREME COURT OF PENNSYLVANIA**

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No. 7 MM 2022

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

Petitioners,

vs.

Leigh M. Chapman, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

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**JOINT APPLICATION FOR LEAVE TO FILE BRIEFS  
IN RESPONSE TO EXCEPTIONS TO THE  
REPORT AND RECOMMENDATION OF THE SPECIAL MASTER**

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Pursuant to Pennsylvania Rule of Appellate Procedure 123, Bryan D. Cutler, the Speaker of the Pennsylvania House of Representatives and Kerry Benninghoff, the Majority Leader of the Pennsylvania House of Representatives (together, the “House Republican Intervenors”), along with Jake Corman, the President *pro tempore* of the Pennsylvania Senate, and Kim Ward, the Majority Leader of the

Pennsylvania Senate (together, the “Senate Republican Intervenors”), apply for leave to file briefs in response to exceptions to Judge McCullough’s report and recommendation that any of the other parties or *amici* file in this matter.

In support of this application, the House Republican Intervenors and Senate Republican Intervenors state as follows:

1. On January 29, 2022, following a two-day trial in the Commonwealth Court, the Carter Petitioners filed an application in which they asked this Court to exercise extraordinary jurisdiction over this matter.

2. On February 2, 2022, this Court entered an order in which it granted the Carter Petitioners’ application and, pursuant to 42 Pa.C.S. § 726, exercised extraordinary jurisdiction over this matter.

3. The Court’s order designated the Honorable Patricia A. McCullough, who presided over the evidentiary hearing, as a Special Master. It also directed Judge McCullough to issue a report that would include proposed findings of fact and conclusions of law and a recommendation for which congressional redistricting plan this Court should adopt from among the ones that were submitted to the Commonwealth Court.

4. On February 7, 2022, Judge McCullough issued her report, which includes proposed findings of fact and conclusions of law and recommends that this Court adopt the map that the House Republican Intervenors and separately the

Senate Republican Intervenors submitted to the Commonwealth Court – namely, H.B. 2146.

5. In the Court’s February 2, 2022, order, the Court set a deadline of February 14, 2022, for any party or *amicus* participant to file exceptions to Judge McCullough’s report and a brief in support of the exceptions. The order also scheduled oral argument on the exceptions on February 18, 2022.

6. However, the Court’s order did not establish a deadline for parties to file responses to any exceptions filed. The absence of such a deadline has left it unclear if and when parties who desire to file such a response may do so.

7. This issue is particularly salient for the House Republican Intervenors and Senate Republican Intervenors, who were the parties who each submitted the map that Judge McCullough recommended for adoption. They do not anticipate filing exceptions to Judge McCullough’s report and are, in fact, effectively postured as appellees in this matter.

8. Ordinarily, under the Pennsylvania Rules of Appellate Procedure, a party who is an appellee or in the position of an appellee has a right to file a responsive brief. *See* Pa.R.A.P. 2112 (Brief of the Appellee) & 2322 (Cross and Separate Appeals). And there is precedent for this in the redistricting context. In the *League of Women Voters* litigation, for instance, this Court permitted both the appellants and the appellees to file briefs in response to the Commonwealth Court’s

report and recommendation. In *Holt I*, as well, this Court issued an order on January 11, 2012 allowing respondents to file a response to the appellants' briefing. Similarly, in the federal system, when a district judge refers a dispositive motion to a magistrate judge for a report and recommendation, the federal rules permit parties to file a response to any objections filed to that report and recommendation. Fed. R. Civ. P. 72(b)(2).

9. With this point in mind, and seeking to be heard on the merits of the parties' and *amici's* exceptions, the House Republican Intervenors and Senate Republican Intervenors each respectfully request leave to file a brief that responds to the exceptions and do so on or before February 17, 2022.

WHEREFORE, the House Republican Intervenors and Senate Republican Intervenors respectfully request that this Court grant each of them leave to file a brief in response to the parties' and *amici's* exceptions.

A proposed form of order is being filed in tandem with this application.

Dated: February 10, 2022

/s/ Anthony R. Holtzman

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Respectfully submitted,

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## CERTIFICATION OF COMPLIANCE

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

/s/ Anthony R. Holtzman  
Anthony R. Holtzman

## CERTIFICATE OF SERVICE

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

**Service by PACFile eService as follows:**

All counsel of record

Date: February 10, 2022

/s/ Anthony R. Holtzman  
Anthony R. Holtzman

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**ORDER**

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AND NOW, this \_\_\_ day of February, 2022, upon review of the House Republican Intervenors' and Senate Republican Intervenors' Joint Application for Leave to File Briefs in Response to Exceptions to the Report and Recommendation of the Special Master, it is hereby ordered that the Joint Application is **GRANTED**. The House Republican Intervenors and the Senate Republican Intervenors shall file their respective responsive briefs on or before **February 17, 2022**.

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J.