

IN THE SUPREME 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 BACHUNIS; TOM DEWALL;  
STEPHANIE MCNULTY; and JANET TEMIN,

*Petitioners,*

v.

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

*Respondents.*

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

*Respondents.*

**CASES  
CONSOLIDATED**

No. 7 MM 2022

**RESPONSE OF GRESSMAN MATH/SCIENCE PETITIONERS TO  
EMERGENCY APPLICATION FOR INTERVENTION OF PROPOSED  
INTERVENOR TEDDY DANIELS**

Petitioners 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 (collectively, “the Gressman Math/Science Petitioners”) hereby respond to the Emergency Application for Intervention of Proposed Intervenor Teddy Daniels (“Emerg. App.”). That Application should be denied under Pennsylvania Rules of Civil Procedure 2327 and 2329, for three reasons.

*First*, Mr. Daniels’s Application should be denied as untimely. *See* Pa. R. Civ. P. 2329(3) (stating that an application to intervene may be refused if “the petitioner has unduly delayed in making application for intervention”). The Commonwealth Court’s December 20, 2021 Scheduling Order required that petitions to intervene be filed by December 31, 2021. Dec. 20, 2021 Order ¶ 1. That same Scheduling Order clearly identified the scope of these proceedings. The Order stated that the Court would consider not only timely filed proposed redistricting plans, but also would “consider revisions to the 2022 election schedule/calendar as part of the hearing.” *Id.* ¶ 4. The Commonwealth Court’s subsequent January 14, 2022 Order scheduling an evidentiary hearing again stated that it would “also consider revisions to the 2022 election schedule/calendar as part of the hearing.” Jan. 14, 2022 Order ¶ 11. Mr. Daniels was therefore on notice that the election calendar was at issue in these proceedings and that, if he wanted to participate,

including on the basis of his interests in the election calendar, he needed to intervene many weeks ago.

Mr. Daniels claims that he had no legally cognizable interest that was affected by this action until this Court suspended the General Primary Election Calendar on February 9, but that is wrong for several reasons. First, Mr. Daniels asserts interests *as a voter*, see Emerg. App. ¶¶ 20–21, 26–27, which would have afforded him standing to participate in the proceedings below, just like the Petitioners and Intervenors. His assertion that these interests did not arise until the Governor vetoed House Bill 2146 on January 26, 2022 (Emerg. App. ¶ 37) is plainly incorrect: The malapportionment of Pennsylvania’s current congressional map became clear nine months before that veto, when the Census Bureau released the reapportionment data showing that the Commonwealth would have to drop from 18 congressional seats to 17; and it was that malapportionment that gave rise to his standing as a voter, not the potential fate of a bill in the General Assembly.<sup>1</sup> 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 release of new decennial census data” (internal quotation marks omitted)). Moreover, the

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<sup>1</sup> While the Commonwealth Court initially dismissed a suit filed in April as not sufficiently ripe, see Order, *Carter v. Degraffenreid*, No. 132 M.D. 2021 (Pa. Commw. Oct 8., 2021), when the Carter and Gressman Petitioners filed the petitions giving rise to this proceeding in December 2021, no party disputed that the petitions were ripe at that time, and the Commonwealth Court did not question their ripeness then either.

Commonwealth Court’s Scheduling Orders made clear that it would not wait until January 26, or any other date of a gubernatorial veto, to proceed with this matter. Dec. 20, 2021 Order ¶ 4; Jan. 14, 2022 Order ¶ 11. So, Mr. Daniels was on notice that the courts viewed his interests as a voter as ripe well before that date.

Second, Mr. Daniels asserts interests *as a candidate* in the election calendar, and those interests were also ripe well before this Court’s February 9, 2022 Order. The Commonwealth Court’s December 20 and January 14 Scheduling Orders expressly stated that these proceedings would encompass potential revisions to the 2022 election schedule. *Id.* Mr. Daniels therefore “knew or should have known,” at that time, that these proceedings implicated his interests in the election schedule. *See Jackson v. Hendrick*, 446 A.2d 226, 229 (Pa. 1982) (affirming denial of intervention because “the dispositive issue” was not whether a court order affected the intervenor’s interests, but whether the intervenor “knew or should have known of the possible remedies at a time sufficiently prior to the entry of the decree to have provided petitioner an opportunity to intervene”). Yet Mr. Daniels did not seek to participate in the proceedings below as a party or *amicus*, did not submit any evidence to be considered by the Special Master or subjected to cross-examination, and therefore did not preserve his ability to participate in this matter. His undue delay is sufficient cause to deny his application under Rule 2329(3).

*Second*, the Court should deny intervention because it would prejudice the adjudication of the rights of the parties. *See* Pa. R. Civ. P. 2329(3) (stating that an application to intervene may be refused if “the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties”). The Special Master heard evidence on the implications of modifying the election calendar. *See, e.g.*, Tr. 1017:2–1023:17 (admitting declaration of Jonathan M. Marks, Deputy Secretary for Elections & Commissions, Pennsylvania Department of State, on implications of moving certain dates in the election calendar). Yet Mr. Daniels did not seek to, and did not, participate in the proceedings before the Special Master. The assertions in his Petition for Review are unsupported even now by any sworn factual evidence, and more importantly were not subjected to cross-examination or rebuttal during the evidentiary hearing in which all parties participated. Allowing Mr. Daniels to enter the proceedings this late in the day would prejudice those parties whose evidence *was* tested and subjected to close analysis and review.

*Third*, intervention should be denied because Mr. Daniels’s interests are adequately represented. *See* Pa. R. Civ. P. 2329(2) (stating that an application to intervene may be refused if “the interest of the petitioner is already adequately represented”). His interests as a voter are adequately represented by the many parties already participating as voters. And his interests as a candidate are likewise

adequately represented because, contrary to Mr. Daniels’s assertion, *see* Emerg. App. ¶ 29, candidates who intend to participate in the forthcoming election cycle are indeed already parties in this case. Those candidates include Congressman Reschenthaler, whose December 31, 2021 Application for Leave to Intervene stated that he was intervening in part because he had “an acute need to know the boundaries of his district before he begins circulating nominating petitions on February 15, 2022.” Dec. 31, 2021 Application of Reschenthaler et al. ¶ 13; *see also id.* ¶¶ 43–49 (further articulating Congressman Reschenthaler’s interests as a candidate, including that a “delayed map” would “adversely affect” his “plans for re-election in the 2022 election cycle”); *see also id.* ¶¶ 33–41 (noting a then-present interest in the proceedings because the 2020 Census rendered the current congressional maps unconstitutional). Mr. Daniels’s interests as both a voter and candidate are therefore adequately represented, and this Court should deny intervention pursuant to Rules 2327 and 2329.

Dated: February 15, 2022

Respectfully submitted,

By: /s/ Kim M. Watterson

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**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY**

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.

Submitted by: Kim M. Watterson

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**PROOF OF SERVICE**

On February 15, 2022, I caused a copy of the foregoing to be served via the electronic filing system, PACFile, upon all counsel of record.

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