

IN THE SUPREME COURT OF PENNSYLVANIA

KERRY BENNINGHOFF, individually,
and as Majority Leader of the Pennsylvania
House of Representatives,

Petitioner,

vs.

2021 LEGISLATIVE
REAPPORTIONMENT COMMISSION,

Respondent.

Case No. _____

**APPLICATION OF PETITIONER KERRY BENNINGHOFF,
INDIVIDUALLY, AND AS MAJORITY LEADER FOR THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES, FOR EMERGENCY
RELIEF DIRECTED TO THE 2022 ELECTIONS**

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INTRODUCTION

A series of delays in this year’s legislative reapportionment process—some necessary because of a several-month delay in the release of the 2020 census data, and others created by a bare majority of the Members of the Legislative Reapportionment Commission (“Commission”)—have made it impossible for a legislative reapportionment plan to be implemented with the force of law in time to meet the statutorily mandated schedule for the upcoming primary election. Petitioner respectfully submits that this Court’s intervention is now required, as it was in the 2011 cycle, to grant relief to safeguard the timely and reliable administration of the imminent 2022 elections.

The simplest, most efficient path for this Court is to proceed as it did last cycle. While the Court hears and resolves appeals from the plan adopted by the Commission on February 4, 2022 (“2021 Final Plan”)¹, it should order that the 2022 elections occur under the *current* legislative reapportionment plan (“2012 Final Plan”)—just as the Court did in *Holt* less than a decade ago when, in January 2012, it struck down the original reapportionment plan and ordered the 2012 elections to proceed under the prior decade’s plan. Taking that approach here is especially appropriate given the concurrent uncertainty around the dates for the congressional

¹ Although the Final Plan was not adopted until February 4, 2022, the Commission Chair has referred to it as the 2021 Final Plan. For consistency’s sake, Petitioner will refer to it the same.

primary given the pending impasse litigation in *Carter v. Chapman*, 7 MM 2022. It is better to resolve the 2022 elections calendar now to ensure elections can proceed in an orderly manner and this Court can spend the time it needs to consider appeals from the 2021 Final Plan and, if the Court strikes down that Final Plan as contrary to law (as it should), review any subsequent legislative reapportionment plan adopted by the Commission on remand.

FACTS

I. The Statutory Schedule for the Primary Election

Under the current, statutory election schedule, Pennsylvania's 2022 general primary election is scheduled for May 17, 2022. See 25 P.S. § 2753(a). The first day to circulate and file nomination petitions for the primary election is February 15, 2022. See 25 P.S. § 2868. The last day to circulate and file nomination petitions for the primary election is March 8, 2022. See 25 P.S. § 2868. The last day for candidates who filed nomination petitions to withdraw their candidacy from the primary election is March 23, 2022. See 25 P.S. § 2874.

Meanwhile, the last day for Pennsylvania residents to register to vote before the primary election is May 2, 2022. See 25 P.S. § 3071(b). The last day for voters to apply for a mail-in or civilian absentee ballot before the primary election is May 10, 2022. See 25 P.S. § 3146.2a(a). All voted military and overseas absentee ballots for the primary election must be sent by May 16, 2022. See 52 U.S.C. §

20302(a)(8)(A); 25 P.S. § 3509. Pennsylvania county boards of elections must receive voted mail-in and civilian absentee ballots for the primary election by May 17, 2022. See 25 P.S. § 3146.6a(a). Pennsylvania county boards of election must receive voted military and overseas absentee ballots for the primary election by May 24, 2022. See 25 P.S. § 3511(a).

These deadlines are approaching rapidly. Candidates, election officials, and the voting public need to know whether they will apply or not. Without judicial intervention, some or all of these deadlines will be missed.

II. Judge McCullough’s Recommended Revised Schedule

Recent developments in the congressional redistricting process are likely to affect the statutory election schedule for state House and Senate elections as well. On February 2, 2022, this Court issued an order assuming extraordinary jurisdiction over impasse proceedings then pending in the Commonwealth Court, and designating Judge Patricia McCullough (“Judge McCullough”) as a Special Master, tasked with identifying proposed findings of fact and conclusions of law and recommending an appropriate congressional redistricting plan for the Commonwealth and any proposed revisions to the statutory election calendar. *See Carter, et al., v. Chapman, et al.*, 7 MM 2022, Order of Feb. 2, 2022, at ¶¶ 2-4.

On February 7, 2022, Judge McCullough issued a report that recommended a proposed congressional redistricting plan for Pennsylvania and also proposed an

amendment to the election calendar. *See* Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendation of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar/Schedule, *Carter, et al., v. Chapman, et al.*, 464 M.D. 2021 & 465 M.D. 2021 (Feb. 7, 2022) (“Special Master’s Report”). In addition to her proposed findings of fact and conclusions of law relating to the congressional redistricting plan itself, Judge McCullough recommended potential revisions to the 2022 election calendar. *See* Special Master’s Report at 221.

Based on the record in the congressional redistricting cases, Judge McCullough proposed the following electoral schedule:

- First day to circulate and file nomination petitions – Tuesday, March 1, 2022
- Last day to circulate and file nomination petitions – Tuesday, March 15, 2022
- Last day to file objections to nomination petitions – Tuesday, March 22, 2022
- 2022 General Primary Election – Tuesday, May 17, 2022

(Special Master’s Report, 221-22.)

On February 9, 2022, in *Carter*, this Court entered an Order declaring that the “General Primary Election calendar, see, e.g., 25 P.S. §§ 2868 and 2873 (relating to the time of circulating and filing nominating petitions) is **TEMPORARILY SUSPENDED**, pending further Order of this Court.” *Carter*, 7 MM 2022 (Feb. 9, 2022).

III. The Legislative Reapportionment Commission Process

The Commission’s process for establishing new state legislative districts has been delayed for several reasons. The first major delay was caused by a several-month delay in the release of 2020 census results. Although those results were due by March 31, 2021, they were not published until August 12, 2021, which meant that the Commission lost almost five months in the process waiting for essential data to conduct the reapportionment process for legislative districts.

In contrast, the second cause of the delay was a self-inflicted wound. A majority of the Commission members chose to embark on a quixotic quest—one not contemplated by the Pennsylvania Constitution or decades of precedent—to alter the census data to “reallocate” approximately 30,000 prison inmates from their prison addresses (where the Census counts prison populations) to their pre-incarceration addresses. Because this process had never been attempted before in the Commonwealth, and had no foundation in the Constitution or statutory law, it significantly set back the Commission’s mapmaking process.

On August 24, 2021, the Commission voted 3-2 to begin this “reallocation” process. Due to this decision, even though the Commission received the census data on August 12, 2021, it could not begin the reapportionment process until this “reallocation” process concluded. While the finalized version of the Census data was available for use by the Commission on September 17, 2021, it took until October

25, 2021 to complete the “reallocation” process and to certify the data for use. Even though the Commission was already behind the curve due to the census delay, an additional 38 days were lost tilting at this particular “windmill.” The Commission failed to adhere to this Court’s previous admonishment to avert such unnecessary delays. *Holt v. 2011 Legislative Reapportionment Comm’n*, 614 Pa. 364, 446 (Pa. 2012) (“*Holt I*”) (“We trust that the LRC will avert similar delay as it is called upon to faithfully execute its task upon remand, and we trust that future such Commissions will act more promptly”).

On December 16, 2021, the Commission adopted its preliminary reapportionment plan (“2021 Preliminary Plan”) by a 3 to 2 vote for the House plan, with Commissioners Ward and Benninghoff voting against, and a 5 to 0 vote for the Senate plan. Thousands of exceptions to the 2021 Preliminary Plan were submitted by the deadline of January 18, 2022. The Petitioner submitted his exceptions to the 2021 Preliminary Plan on January 15, 2022.

On February 4, 2022, the Commission voted to adopt the 2021 Final Plan (and did so over the dissent of the undersigned Petitioner and the expressed reservations of Commissioner Ward). Under Article II, Section 17 of the Pennsylvania Constitution, “[a]ny aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing therefore.” Thus, the deadline under the Pennsylvania Constitution for parties to appeal the 2021 Final Plan will

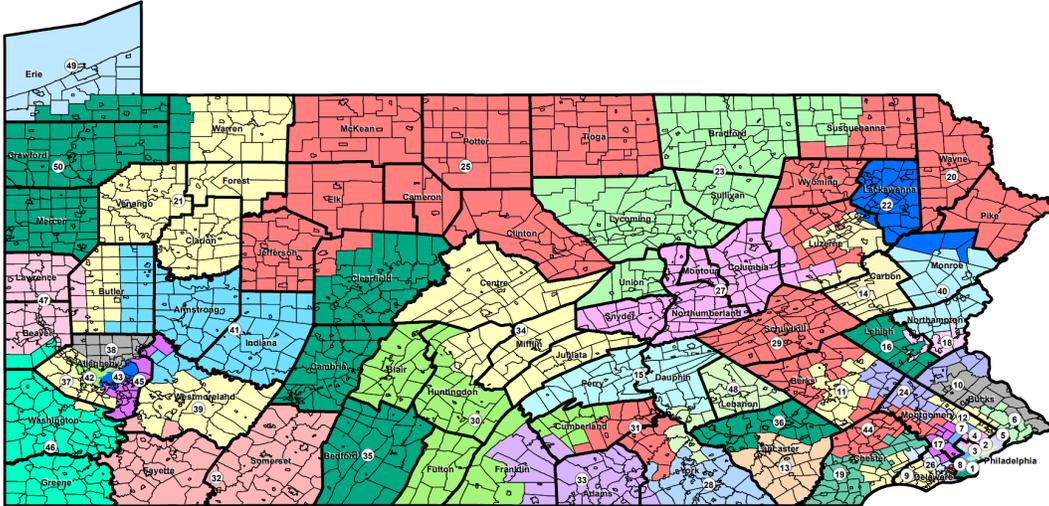
not expire until March 7, 2022²—just one day before the statutory deadline to finish circulating nominating petitions. In addition, even if Judge McCullough’s proposed schedule is adopted, the first day to begin circulating and filing nomination petitions will still be six days before the March 7 deadline for appeal. That means that appeals will likely continue to be filed even as nomination petitions are supposed to begin circulating throughout Pennsylvania.

Because of the breakdown of the Commission process, the inability of the Commission to craft a valid plan in a timely fashion, and, now, the suspension of the primary calendar in *Carter*, the sound functioning of the 2022 primary election is now in significant danger.

IV. The Existing House and Senate Maps

It is undisputed that the Pennsylvania Constitution requires a reapportionment of state legislative districts every ten years, in tandem with the U.S. Census. *See* Pa. Const. art. II, § 17. It is further undisputed that there are tradeoffs involved with attempting to use the existing House and Senate maps to conduct the 2022 elections due to delays that impact the timing of the statutory election calendar. However, the prior decade’s reapportionment plan was first used in the 2014 elections, in the aftermath of the *Holt* litigation. Crucially, the existing reapportionment plan’s

² The 2021 Final Plan was adopted on February 4, 2022, making any appeals due on March 6, 2022, which is a Sunday, so the deadline extends until the next day – March 7, 2022.



The prior decade’s reapportionment plan was created under a process that was shaped extensively by this Court and was held to pass constitutional muster. No other such plan currently exists. To the extent the 2021 Final Plan may one day have the force of law, it will not have the force of law in time for the 2022 election cycle. For that reason, the clearest and surest path forward for this Court is to order that the 2022 elections be run under the current reapportionment plan approved in *Holt II*.

LAW AND ARGUMENT

I. Running the State Legislative Elections in the Existing Districts Is the Best Remaining Option.

Because the 2021 Final Plan is late, candidates, their campaigns, and election officials are laboring under tremendous uncertainty. Moreover, due to the significant constitutional issues with the 2021 Final Plan, as identified in the thousands of

exceptions that were filed, numerous appeals are bound to result,⁵ which only compounds the uncertainty. And those appeals will not be due until March 7, 2022. These realities create immediate, concrete, and unavoidable problems with even the most basic election-related procedures. For instance, in order to circulate and file nomination petitions, prospective candidates must know the size and shape of the districts in which they are to run, as only registered voters within a given district may sign petitions for persons seeking to run in that district. And in order to do that, the Secretary of State and her designees require lead time to complete the administrative process necessary to ensure that voters are properly assigned to their new districts.⁶ These issues are compounded by the possibility that, assuming this Court accepts Judge McCullough's recommended changes, nomination petitions

⁵ In every single redistricting cycle under the Commission framework, the final plan adopted by the Commission has been subjected to numerous appeals. *See, e.g., Holt v. 2011 Legislative Reapportionment Comm'n*, 620 Pa. 373 (Pa. 2013) ("*Holt II*"); *Holt I*; *Albert v. 2001 Legislative Reapportionment Comm'n*, 790 A. 2d 989 (Pa. 2002); *In re 1991 Pa. Legislative Reapportionment*, 609 A. 2d 132 (Pa. 1992); *In re Reapportionment Plan for the Pa. General Assembly*, 442 A. 2d 661 (Pa. 1982); *Com. ex rel. Specter v. Levin*, 448 Pa. 1 (Pa. 1972).

⁶ On February 8, 2022, Leigh Chapman, Acting Secretary of the Commonwealth, and Jessica Mathis, Director of the Pennsylvania Bureau of Election Services and Notaries, filed an Emergency Application for Extraordinary Relief in this Court, Case No. 8 MM 2022, asking this Court to suspend the primary calendar pending adoption of a final reapportionment plan. In that Emergency Application (at 7-8), Chapman and Mathis describe some of these election-administration concerns.

will now begin to circulate on March 1, *before* this Court has even received all of the appeals from the 2021 Final Plan.

Because of the delays to the Commission process created by the Census and the odd and constitutionally-suspect decision to reallocate certain prisoners, there is simply no longer time to fully adjudicate challenges to the 2021 Final Plan *and* run the coming elections on the existing, statutorily prescribed schedule, or even the ones currently proposed by Judge McCullough.

Finally, Petitioner notes that on February 14, 2022, the Acting Secretary of the Commonwealth and the Director of the Bureau of Election Services and Notaries (together, the “Executive Election Administrators”) filed their “Exceptions Regarding The Special Master’s Proposed Revision To The 2022 Election Calendar/Schedule And Incorporated Brief In Support Thereof” (the “Resp. Schedule Br.”), attached hereto as **Exhibit A**) in *Carter v. Chapman*, Supreme Court Case No. 7 MM 2022, in which the Executive Election Administrators proposed a revised election calendar for congressional elections and then suggested a proposed revised election calendar for General Assembly elections. *See id.* at 11-13. However, this schedule is plainly unworkable for two reasons.

First, under the Executive Election Administrators’ proposed timeline, this Court would have to adjudicate all appeals filed to the Commission’s 2021 Final Plan by March 18, 2022 – only eleven days after the constitutional deadline of March

7 to file such appeals. It is entirely unreasonable to expect this Court to pore through an extensive administrative record before the Commission and to adjudicate what are likely to be several very complex sets of appeals within such a short timeframe. Given the number of significant problems with the 2021 Final Plan, that is unlikely—and this Court should not feel pressured to act under an artificial deadline to adjudicate the constitutionality and lawfulness of a legislative redistricting plan that will govern General Assembly elections for a decade. Moreover, proceeding on this proposed schedule requires an assumption that this Court will not find constitutional infirmities with the 2021 Final Plan and remand it to the Commission. This Court cannot risk that assumption—especially given the issues with the 2021 Final Plan that were raised during Commission proceedings—and throw the 2022 election process into complete chaos if this Court remands the 2021 Final Plan just days before nominating petitions are set to circulate.

Second, under the proposed schedule, the last day for the Commonwealth Court to resolve objections to nominating petitions for General Assembly candidates is April 12, 2022—ten days *after* the federal deadline of April 2 on which UOCAVA (military/overseas) ballots must be mailed. *See* Resp. Sched. Br. at 12-13. Therefore, should the Commonwealth Court ultimately sustain any objections to nominating petitions, rendering candidates invalid, the Commonwealth will have already issued ballots containing invalid candidates to untold numbers of UOCAVA citizens—

potentially depriving them of their fundamental right to vote. (i.e., should a UOCAVA voter not realize that a candidate has been removed from the ballot and vote for such candidate, the voter will have thrown his or her vote away.)

For these reasons alone, this Court should order that the 2022 elections be conducted using the existing House and Senate reapportionment plan.

II. In the Absence of a New, Valid Plan, the Court Has Once Before Ordered the Use of Existing Senate and House Maps.

Petitioner appreciates that using the prior decade’s reapportionment plan for the 2022 elections is not ideal. The Constitution prescribes a reapportionment following the release of new decennial census data, *see* Pa. Const. art. II, §§ 16, 17, and running the 2022 elections under the prior decade’s plan is not consistent with that requirement. But the problem is that there is no other legal plan, and there is an election that must be held this year.

When faced with a similar situation in the past, this Court resolved the unenviable choice of using the old maps or letting the elections devolve into chaos by choosing the lesser of two evils. It should do so again. Indeed, under existing precedent, maintenance of the existing districts will occur by “operation of law,” when “a Final Plan is challenged on appeal, and this Court finds the plan contrary to law and remands, the proffered plan does not have force of law, and the prior plan obviously remains in effect.” *Holt I*, 614 Pa. at 380 (footnotes omitted).

In *Holt I*, the Court recounted that, on January 25, 2012, it “issued a *per curiam* order, declaring that the Final Plan was contrary to law, and remanding to the LRC with a directive to reapportion the Commonwealth in a manner consistent with this Court’s Opinion, which would follow.” *Holt I*, 614 Pa. at 380. That *per curiam* order also specified that the 2001 redistricting plan “would remain in effect until a revised final 2011 Legislative Reapportionment Plan having the force of law is approved.” *Id.* This Court later reaffirmed the holdings in *Holt I*. See *Holt v. 2011 Legislative Reapportionment Comm’n*, 620 Pa. 373, 425 (Pa. 2013) (“*Holt II*”) (“For the reasons we have articulated above, we reaffirm *Holt I* as against the various challenges made to the decision[.]”).

Some parties may argue that the use of a prior decade’s plan results in malapportioned districts that violate the one-person, one-vote requirement of the Equal Protection Clause of the Fourteenth Amendment. But equal protection does not demand a constant, minute-by-minute updating of district lines to ensure precisely equal populations. Rather, compliance with the one-person, one-vote standard is process-driven, requiring states to have only “a rational approach to readjustment of legislative representation” or, stated differently, a “reasonable plan for periodic revision.” *Reynolds v. Sims*, 377 U.S. 533, 583 (1964). This process-driven standard recognizes that “[l]imitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the

legislative system, although undoubtedly reapportioning no more frequently than every 10 years *leads to some imbalance in the population of districts toward the end of the decennial period.*” *Id.* (emphasis added).

In fact, federal lawsuits were filed in response to this Court’s decision in *Holt I* to conduct the 2012 elections under the 2001 reapportionment plan. Those lawsuits were rejected. As one of those courts found, “no constitutional violation exists when an outdated legislative map is used, so long as the defendants comply with a reasonably conceived plan for periodic reapportionment.” *Garcia v. 2011 Legislative Reapportionment Comm’n*, 938 F. Supp. 2d 542, 550 (E.D. Pa. 2013), *aff’d on other grounds* 559 F. App’x 128 (3d Cir. 2014). *See also, e.g., Pol. Action Conf. of Illinois v. Daley*, 976 F.2d 335, 341 (7th Cir. 1992); *Graves v. City of Montgomery*, 807 F. Supp. 2d 1096, 1109, 1112 (M.D. Ala. 2011); *French v. Boner*, 940 F.2d 890 (6th Cir. 1991); *Mac Govern v. Connolly*, 637 F. Supp. 111, 114 (D. Mass. 1986); *Cardona v. Oakland Unified Sch. Dist., California*, 785 F. Supp. 837, 842 (N.D. Cal. 1992). Likewise, in *Pileggi v. Aichele*, the court denied a request to enjoin 2012 elections conducted under the 2001 plan, explaining:

We can only speculate as to whether or when there will be a constitutionally approved reapportionment plan based upon the 2010 census. *Because there is presently no alternative plan*, if we issue a temporary restraining order and request a three-judge panel, *the primary election certainly will not occur as required by statute.*

843 F. Supp. 2d 584, 596 (E.D. Pa. 2012) (emphasis added).

While this Court has not yet ruled that the 2021 Final Plan is unconstitutional, as it did in *Holt I*, and while formal election deadlines have not yet passed, as was the case in *Pileggi*, Petitioner submits that there is no longer time to adjudicate those challenges and hold elections under a new plan. Indeed, *Holt I* declared the plan unconstitutional on January 25, 2012, and in *that* scenario this Court found insufficient time for the Commission to adopt a new plan and to hear challenges. In this case, it is unlikely this Court will be able to decide challenges to the 2021 Final Plan until the end of March—two months behind the pace in *Holt I*.

Further, if the Court does invalidate the 2021 Final Plan, this Court will be in essentially the same position it faced in *Holt I* and that the federal Court correctly identified in *Pileggi*. There will be no alternative plan, and further revisions and appeals will not be resolved in time for the election to proceed under the statutory schedule. While this Court will doubtless move with “alacrity” to resolve any appeals, as it has in the past, *Holt I*, 614 Pa. at 446 n.40, the Court would effectively be wagering that any constitutional deficiencies with the 2021 Final Plan—and there are many—can be remedied quickly, and a second round of appeals concluded, without running up against the primary election date or blowing through the other relevant deadlines. *See Pileggi*, 843 F.Supp.2d at 595. But given the current status of the process, that is impossible.

And even assuming this Court finds the 2021 Final Plan constitutional, such a ruling will not come until after deadlines have already passed under the statutory calendar and under Judge McCullough's proposed amended calendar. Appeals of the 2021 Final Plan are not due until March 7, 2022 under Article II, Section 17, of the Pennsylvania Constitution. Those appeals will then require briefing and oral argument before this Court. And even though this Court has shown the ability to move expeditiously, it will need at least some time to evaluate all of the appeals and to render a ruling. Thus, even assuming this Court finds the 2021 Final Plan is constitutional, such plan does not have the force of law until all appeals have been resolved. Pa. Const. art. II, § 17. In short, even an amended schedule does not allow enough time for the constitutional legislative reapportionment process to come to completion.

Under these circumstances, the Court should adhere to its prior precedent that the current House and Senate districts adopted in *Holt II* are the only way to administer the 2022 elections without risking electoral chaos and potentially disenfranchising the voters of Pennsylvania.

III. Other Potential Alternatives, Such as Further Shifting the Election Calendar, Will Not Solve the Problem.

While past redistricting cycles have resulted in the judiciary revising certain dates on the election calendar, attempting to do so here would achieve little to rectify

the timing problem for legislative redistricting, risk much, and possibly make the situation worse.

To begin, there is precious little time before the May primary election for “adjustments” to be made to nominating petition and related deadlines. Meanwhile, the Commonwealth’s voters, elections officials, office-holders, candidates, political parties, activist groups, and others do not have certainty about the boundaries of the House and Senate districts. Absent relief, this complete uncertainty could persist through the end of March (or beyond) before this Court can adjudicate the challenges to the 2021 Final Plan. Such a chaotic state of affairs significantly burdens election administration and public confidence in the process.

Moreover, even if a change to the electoral calendar created sufficient breathing room to allow the Court to decide the appeals and uphold the 2021 Final Plan before the primary election—and it likely would not—an extension of the schedule still does not address what will happen if the plan is overturned on appeal and the Commission must begin its work anew. Shifting deadlines by a few weeks simply does not account for the time needed to craft and approve a new plan and to adjudicate the resulting appeals from *that* plan. As this Court recognized in *Holt I*:

Where, as here, aggrieved citizens prove that a redistricting plan is contrary to law, the Constitution specifies that the remedy is a remand to the LRC and the Final Plan does not have force of law. This Court's *per curiam* order of January 25, 2012, rendered two days after argument, provided the only direction possible to candidates in light of our Constitution and our 2002 decision in Albert, which upheld the 2001

Final Plan. As we have noted earlier, we recognize that our constitutional duty to remand a plan found contrary to law has disrupted the 2012 primary election landscape. That disruption was unavoidable in light of the inexcusable failure of the LRC to adopt a Final Plan promptly so as to allow the citizenry a meaningful opportunity to appeal prior to commencement of the primary season.

Holt I, 614 Pa. at 446. This Court should not be forced into guesswork when a more workable alternative exists and has been deployed in the past—running the 2022 elections using the existing districts approved in *Holt II*. *See id.* (“We are not in a position to predict when the LRC will complete its task of developing a new final redistricting plan that complies with law, nor when such a new plan can become final and have force of law.”).

Given these realities—the inherent uncertainty of appeals from the 2021 Final Plan and the time potentially needed to craft a new plan if deficiencies are identified—it is simply too risky for this Court to try to thread the needle and create a new schedule for elections that are very nearly underway. While running the House and Senate elections in the existing districts is not anyone’s first choice, it is the safest and surest way to ensure that the election will run on time and with a minimum of confusion or disruption.

Finally, Judge McCullough’s recommendation for an altered schedule in *Carter* does not avoid the significant problems associated with trying to run the upcoming state legislative elections without a constitutional final reapportionment plan in place. If the schedule proposed by Judge McCullough is implemented,

Special Master’s Report at 221, the election process will be playing out at the same time as the appeals that will determine the state electoral map. State legislative candidates will have to attempt to circulate nomination petitions within districts that may or may not be upheld on appeal. That is simply not tenable, and this Court should step in to prevent the resulting chaos. As discussed above, the revised schedule proposed by Executive Election Administrators in the *Carter v. Chapman* matter does not solve the problem either. Delaying the schedule by even a few more weeks results in the same risks. Either schedule requires an assumption that this Court will not find the 2021 Final Plan unconstitutional—an assumption this Court should not make at the risk of upending the entire election calendar on the eve of the 2022 elections.

It is unfortunate that the legislative redistricting process has once again come to this point, but this Court and this Commonwealth are best served by adopting a proven approach that minimizes risk, rather than one that invites the Court to engage in speculation and to delay hard choices that are, at this point, unavoidable.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court issue an order that the upcoming 2022 primary and general elections should occur in the existing House and Senate districts, rather than under the Commission’s 2021 Final Plan.

Dated: February 17, 2022

Respectfully submitted,

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** Pro Hac Vice application forthcoming*

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*Majority Leader of the Pennsylvania
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CERTIFICATE 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/ Jeffrey Duffy

Jeffrey Duffy (PA No. 081670)

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the within APPLICATION was served
this 17th day of February, 2022, by the methods indicated upon the following:

BY CERTIFIED MAIL, RETURN-RECEIPT REQUESTED

2021 Legislative Reapportionment Commission
Attn. G. Reynolds Clark, Executive Director
209 Irvis Office Building
Harrisburg, PA 17120

BY CERTIFIED MAIL, RETURN-RECEIPT REQUESTED

The Honorable Josh Shapiro
Office of Attorney General of Pennsylvania
c/o Torts Litigation Unit
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Harrisburg, Pennsylvania 17120

BY CERTIFIED MAIL, RETURN-RECEIPT REQUESTED, AND E-MAIL

2021 Legislative Reapportionment Commission
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/s/ Jeffry Duffy

Jeffry Duffy (PA No. 081670)

122042.000003 4892-9417-1407

IN THE SUPREME COURT OF PENNSYLVANIA

No. 7 MM 2022

CAROL ANN CARTER *et al.*,
Petitioners,

v.

LEIGH M. CHAPMAN, *et al.*,
Respondents.

**RESPONDENTS' EXCEPTIONS REGARDING
THE SPECIAL MASTER'S PROPOSED REVISION TO THE
2022 ELECTION CALENDAR/SCHEDULE AND
INCORPORATED BRIEF IN SUPPORT THEREOF**

On Review of the Special Master's Proposed Findings of Fact and
Conclusions of Law, Nos. 464 M.D. 2021 and 465 M.D. 2021 (February 7, 2022)

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EXHIBIT A

Respondents, the Acting Secretary of the Commonwealth and Director of the Bureau of Election Services and Notaries, respectfully submit these Exceptions to the Special Master's proposed revision to the 2022 election calendar. In support of these Exceptions, the Respondents submit and attach hereto the Affidavit of Jonathan Marks dated February 14, 2022 ("Marks II Aff.").

The Secretary of the Commonwealth is Pennsylvania's chief election official, and Respondents are both election administrators charged with ensuring that Pennsylvania's elections are conducted in a fair, lawful, and orderly manner. Thus, in this litigation, Respondents' roles are two-fold: (1) to provide the Court with information where necessary; and (2) to minimize disruption of the 2022 elections by keeping the Court and the other parties apprised of election schedules and potential alterations to those schedules.¹ In keeping with those roles, Respondents respectfully submit these Exceptions to assist the Court in determining what changes to the 2022 election calendar are feasible and necessary based on the existence of other deadlines and the demands of election administration.

Although the Special Master's February 7, 2022 Report recommended certain changes to the election calendar for the congressional primary election, the

¹ Respondents note that, although they have not proposed a congressional district plan in this litigation, Intervenor-Respondent Governor Wolf has proposed a plan for judicial adoption.

Report expressly “recognize[d]” that, “in light of the changed circumstances of this litigation prompted by [this] Court’s February 2, 2022 order, granting Petitioners’ Emergency Application for Extraordinary Relief and invoking its extraordinary jurisdiction, ... further and/or different changes to the election calendar ... may be necessary.”² Respondents agree that further changes are necessary and appropriate. In particular, the Special Master’s Report did not address the calendar for the statewide and state legislative elections. For the reasons discussed herein, Respondents respectfully request that this Court address the calendar for all primary elections at this time.

In summary, despite delays in the redistricting process for both congressional and state legislative elections, Respondents believe that it is feasible—and highly preferable—to conduct the primary election for all races on the currently scheduled date of May 17, 2022.

Given recent experience, there appears to be a substantial possibility that a state-court decision moving the date of the primary election for a federal office would be challenged under the Elections Clause, *see* U.S. CONST. art. I, § 4, cl. 1.³

² The Honorable Patricia A. McCullough, Report Containing Proposed Findings of Fact and Conclusions of Law Supporting Recommendation of Congressional Redistricting Plan and Proposed Revision to the 2022 Election Calendar Schedule at 222 (Feb. 7, 2022).

³ In *Pennsylvania Democratic Party v. Boockvar*, 283 A.3d 345 (Pa. 2020), at least one of the parties and counsel to the present proceeding (the “Present Participants”) filed an Elections Clause challenge to this Court’s decision to extend, by only three days, the statutory “received-

Irrespective of the merits and ultimate resolution of such litigation, its pendency would inject uncertainty into an election cycle that is already quite challenging for both election administrators and candidates.

Further, keeping the congressional primary on May 17 but changing the primary date for state legislative offices, *i.e.*, having separate primaries, would likely cause voter confusion, depress voter participation, and cost taxpayers tens of millions of dollars. It would also present county election offices with significant logistical challenges, including the recruitment of poll workers. Respondents believe that the county boards of elections, which are responsible for directly administering elections, would also like to avoid having two separate primary dates.

In Section II.A and B below, Respondents provide a proposed election calendar (one for the statewide and congressional elections, and another for the

by” deadline for mail-in ballots. The Court’s Order was based on its determination that enforcing the statutory deadline in the extraordinary circumstances of the 2020 general election—which took place during the height of the COVID-19 pandemic and was beset for mail delays—would disenfranchise voters in violation of the Pennsylvania Constitution’s Free and Equal Elections Clause. *Id.* at 369. Nonetheless, the Present Participants asked the Supreme Court of the United States to reverse this Court’s Order, contending that the Order violated the Elections Clause. *See* Emergency Application for a Stay Pending the Filing and Disposition of a Petition for a Writ of Certiorari, *Scarnati v. Pa. Democratic Party*, No. 20A53 (U.S. filed Sept. 28, 2020); Emergency Application for a Stay Pending Disposition of a Petition for a Writ of Certiorari, *Pa. Democratic Party v. Boockvar*, No. 20A54 (U.S. filed Sept. 28, 2020); *see also* *Scarnati v. Boockvar*, 141 S. Ct. 644 (U.S.) (denying application to stay this Court’s Order by a 4-4 vote); *Republican Party of Pa. v. Boockvar*, 141 S. Ct. 643 (same).

state legislative election) that would allow the primary election for all races to be held on May 17, 2022.

I. THE CURRENT ELECTION SCHEDULE

The current election schedule stands as follows:

Event	Deadline
The first day before the primary election to circulate and file nomination petitions (<i>see</i> 25 P.S. § 2868).	February 15, 2022
The last day before the primary election to circulate and file nomination petitions (<i>see</i> 25 P.S. § 2868).	March 8, 2022
The first day before the primary election to circulate and file nomination papers (<i>see</i> 25 P.S. § 2913(b)).	March 9, 2022
Deadline to file objections to nomination petitions (<i>see</i> 25 P.S. § 2937).	March 15, 2022
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions (<i>see</i> 25 P.S. § 2937).	March 18, 2022
The last day before the primary election for candidates who filed nomination petitions to withdraw their candidacy (<i>see</i> 25 P.S. § 2874).	March 23, 2022
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions (<i>see</i> 25 P.S. § 2937).	March 23, 2022
The last day before the primary election for the County Board of Elections to send remote military-overseas absentee ballots (<i>see</i> 25 Pa.C.S. § 3508(b)(1)).	March 28, 2022
The last day before the primary election for the County Board of Elections to send all remaining military-overseas absentee ballots (<i>see</i> 25 Pa.C.S. § 3508(a)(1); 52 U.S.C. § 20302(a)(8)(A)).	April 1/2, 2022 ⁴

⁴ Under state law, if this deadline falls on a Saturday, as it does this election cycle, the deadline is moved to the proceeding day. 25 Pa.C.S. § 3508(a)(1). Federal law does not have a similar rule, and the deadline stays the same even if it falls on the weekend. 52 U.S.C. § 20302(a)(8)(A). This means that under state law, the last day before the primary election for the County Board of Elections to send all remaining military-overseas absentee ballots is April 1, while the deadline under federal law is April 2.

Event	Deadline
The last day before the primary election for voters to register (<i>see</i> 25 P.S. § 3071).	May 2, 2022
The last day before the primary election to apply for a mail-in or civilian absentee ballot (<i>see</i> 25 P.S. § 3146.2a(a)).	May 10, 2022
The last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots for the primary election (<i>see</i> 25 P.S. § 3146.6(a)).	May 17, 2022
Pennsylvania’s 2022 general primary election (<i>see</i> 25 P.S. § 2753(a)).	May 17, 2022
The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election for the primary election (<i>see</i> 25 Pa.C.S. § 3511(a)).	May 24, 2022

II. PROPOSED MODIFICATIONS TO THE CURRENT ELECTION CALENDAR WITH MAY 17 PRIMARY

A. Proposed Modified Statewide and Congressional Calendar

Through a combination of internal administrative adjustments and Court-ordered date changes, it is possible to hold the statewide and congressional primaries on the scheduled May 17, 2022 date.

The current election schedule gives the Counties ten weeks to prepare for the primary election, between (1) the last date before the primary election for circulating and filing nomination petitions (currently March 8), and (2) the primary election date (May 17). Respondents believe that the Counties could fully prepare for the statewide and congressional primary elections in nine weeks.

To accommodate this slightly compressed schedule, the Court would need to order a period for circulating and filing nomination petitions that lasted two weeks,

instead of three; and the nominations period would need to start on March 1, spanning two weeks and ending on the recommended revised deadline of March 15. The Department and county boards of elections have typically had three weeks of preparation time before the first date for circulating and filing nomination petitions. During this period, the Department would update the Department's Elections and Campaign Finance system, and the counties would update the Statewide Uniform Registry of Electors ("SURE") system, to reflect the new districts.⁵ The Department previously represented that with the addition of staff and increased staff hours, it would be possible for the Department to complete its preparations in two weeks instead of three.⁶ Upon further review, the Department believes that, by using generic nomination petitions,⁷ the Department could complete its preparations for circulating and filing nomination petitions quickly

⁵ See Affidavit of Jonathan Marks ("Marks I Aff.") ¶ 15 (Jan. 28, 2022), which was admitted into evidence at the hearing conducted by the Special Master in this proceeding on January 27-28, 2022.

⁶ See *id.* ¶ 16.

⁷ Ideally, the Department and county boards of elections would have an opportunity, before the circulation and filing of nomination petitions begin, to fully update the Statewide Uniform Registry of Electors (SURE) system with information about the new districts. In that event, the computerized tool used to generate nomination petitions would allow candidates to pre-populate all the information needed on the Candidate's Affidavit, as well as the information needed in the preamble portion of the nomination petition page, based on the specific office the candidate is seeking. By contrast, with generic nomination petitions, candidates running in particular districts must manually fill in the District Number line on the Candidate's Affidavit and the District Number line and County of Signers lines at the top of each nomination petition page. These two lines will be blank when the petition forms are generated and printed. Nonetheless, the computerized tool used to generate the generic nomination petitions will still pre-populate the rest of the information for the candidate's review.

and in only a couple of days, by March 1, 2022. Although the use of generic nomination petitions is less than ideal, *see supra* note 6, it will allow for the election process to proceed in a timely manner, as necessitated under the unusual circumstances of the current election cycle.

Accordingly, if the first date for circulating and filing nomination petitions were moved from February 15 to March 1, the Department would need to have a final congressional plan in place by no later than **February 27, 2022**. However, the Department respectfully requests that the Court issue an Order establishing the calendar deadlines as early as possible, and before February 27, 2022, so that counties, candidates, and the Department have time to prepare for the commencement of petition filing.

The below chart illustrates the modifications proposed to the calendar for the statewide and congressional elections:

Event	Current Deadline for Statewide and Congressional Elections	Proposed Modified Deadline for Statewide and Congressional Elections
First day to circulate and file nomination petitions	February 15, 2022	<u>March 1, 2022</u>
Last day to circulate and file nomination petitions	March 8, 2022 <i>(three-week period for circulating and filing nomination petitions)</i>	<u>March 15, 2022</u> <i>(<u>two-week</u> period for circulating and filing nomination petitions)</i>
First day to circulate and file nomination papers	March 9, 2022	March 16, 2022

Event	Current Deadline for Statewide and Congressional Elections	Proposed Modified Deadline for Statewide and Congressional Elections
Deadline to file objections to nomination petitions	March 15, 2022 <i>(objections must be filed within 7 days)</i>	March 22, 2022
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions	March 18, 2022 <i>(not later than 10 days after the last day for filing nomination petitions)</i>	March 25, 2022
Last day for candidates who filed nomination petitions to withdraw their candidacy	March 23, 2022	[no deadline change]
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions	March 23, 2022 <i>(not later than 15 days after the last day for filing nomination petitions)</i>	March 30, 2022 ⁸
Last day for the County Board of Elections to send remote military-overseas absentee ballots	March 28, 2022	April 2, 2022 ⁹
Last day for the County Board of Elections to send all remaining military-overseas absentee ballots	April 1/2, 2022 ¹⁰	April 2, 2022
Last day for voters to register before the primary election	May 2, 2022	[no deadline change]

⁸ Following this chart, Respondents discuss the need for this Court to modify the 10-day period for appealing from the Commonwealth Court’s decisions resolving objections to nomination petitions.

⁹ See Marks II Aff. ¶ 21. Because the deadline for sending “remote” military-overseas absentee ballots is a function of state law rather than federal law, this Court has the power to move this deadline.

¹⁰ See *supra* note 4.

Event	Current Deadline for Statewide and Congressional Elections	Proposed Modified Deadline for Statewide and Congressional Elections
Last day before the primary election to apply for a mail-in or civilian absentee ballot	May 10, 2022	[no deadline change]
Last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots for the primary election	May 17, 2022	[no deadline change]
Pennsylvania’s 2022 general primary election	May 17, 2022 <i>(ten weeks between last date for circulating and filing nomination petitions and primary election)</i>	[no deadline change] <i>(<u>nine weeks</u> between last date for circulating and filing nomination petitions and primary election)</i>
The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election for the primary election	May 24, 2022	[no deadline change]

In conjunction with this proposal, Respondents wish to address a deadline that is not listed on the chart above—namely, the deadline for parties to appeal from the Commonwealth Court’s decisions resolving objections to nomination petitions. If the Court adopts the proposal above, the Commonwealth Court decisions will be due by March 30, 2022. Under the Rules of Appellate Procedure, any person aggrieved by such decisions would then have 10 days to appeal to this Court. *See* Pa.R.A.P. 803(c)(1)(ii); *In re Morgan*, 428 A.2d 1055, 1057 (Pa. Commw. Ct. 1981).

This Court has the power to shorten this deadline. *See* Pa.R.A.P. 105(a) (an appellate court may “disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction”); *see also Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711, 721 n.10 (Pa. 2012) (“as it respects the judicial function, the Election’s Code deadlines [for resolving objections to nomination petitions] are understood ... as ‘directory’” rather than mandatory). Respondents respectfully submit that the Court should do so here, and should require aggrieved parties to file any appeals within 3 days of the pertinent Commonwealth Court’s decision.

This shortened deadline is necessary and appropriate to ensure that ballots can be finalized in time for counties to send mail-in and absentee ballots to voters. Under the Election Code, counties must distribute ballots to electors who have applied for them no later than two weeks before the primary—here, May 3, 2022. *See* 25 P.S. § 3150.15. As a practical matter, however, given mail-delivery timelines and the need to process ballot applications submitted after May 3, 2022, counties will want to begin sending ballots at an earlier date. Respondents believe that, to ensure that any nomination-petition appeals can be resolved in sufficient time to finalize the mail-in and absentee ballots, the appeal period should be shortened to 3 days.

B. Proposed Modified Legislative Calendar with May 17 Primary

As the Court is aware, the Legislative Reapportionment Commission (“LRC”) adopted a Final Plan on February 4, 2022. That means that any aggrieved party has until March 7, 2022, to file an appeal. *See* PA. CONST. art. II, § 17(d); Pa.R.A.P. 903 official comment (where, as here, appeal period expires on a Sunday, any aggrieved person has until the following Monday to file an appeal). If this Court were to expedite any briefing¹¹ and argument on the appeals and enter a final ruling on the legislative Final Plan by **March 18, 2022**, the May 17 primary date could (if the Final Plan is determined to be lawful) also remain in place for the state legislative races under the proposed schedule below.

Event	Current Deadline for Legislative Election	Proposed Modified Deadline for Legislative Election
First day to circulate and file nomination petitions	February 15, 2022	March 20, 2022
Last day to circulate and file nomination petitions	March 8, 2022 <i>(three-week period for circulating and filing nomination petitions)</i>	March 29, 2022 <i>(nine-day period for circulating and filing nomination petitions)</i> ¹²

¹¹ This Court may wish to consider issuing an order now requiring that any brief filed in support of an appeal of the LRC’s Final Plan be submitted on or before March 8, 2022, and that the LRC file a response brief on or before March 11, 2022.

¹² In *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992) this Court ordered a nine-day nomination-petition-circulation period for congressional candidates. *See id.* at 244. Notably, candidates for state legislative office require significantly fewer petition signatures than candidates for congressional office. *Compare* 25 P.S. § 2872.1(12) (1,000 signatures required for congressional candidate), *with id.* § 2871.1(13) (500 signatures requires for candidate for

Event	Current Deadline for Legislative Election	Proposed Modified Deadline for Legislative Election
First day to circulate and file nomination papers	March 9, 2022	March 30, 2022
Last day for candidates who filed nomination petitions to withdraw their candidacy	March 23, 2022	March 31, 2022
Last day for the County Board of Elections to send remote military-overseas absentee ballots	March 28, 2022	April 2, 2022 ¹³
Last day for the County Board of Elections to send all remaining military-overseas absentee ballots	April 1/2, 2022 ¹⁴	April 2, 2022
Deadline to file objections to nomination petitions	March 15, 2022 <i>(seven-day period for filing objections to nomination petitions)</i>	April 4, 2022 <i>(six-day period for filing objections to nomination petitions)</i> ¹⁵
Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions	March 18, 2022 <i>(not later than 10 days after the last day for filing nomination petitions)</i>	April 7, 2022 <i>(not later than nine days after the last day for filing the nomination petitions)</i> ¹⁶

Pennsylvania Senate), *and id.* § 2871.14 (300 signatures required for candidate for Pennsylvania House of Representatives).

¹³ See Marks II Aff. ¶ 21.

¹⁴ See *supra* note 4.

¹⁵ This Court ordered a six-day objection period in *Mellow v. Mitchell*. See 706 A.2d at 244.

¹⁶ This Court may alter the deadlines governing the Commonwealth Court’s resolution of objections to nomination petitions. See *Holt*, 38 A.3d at 721 n.10 (“as it respects the judicial function, the Election’s Code deadlines [for resolving objections to nomination petitions] are understood ... as ‘directory’” rather than mandatory); *In re Bruno*, 101 A.3d 635, 678 (Pa. 2014) (“[t]he Supreme Court’s supervisory power over the Unified Judicial System is beyond question” and includes “authority ... over inferior tribunals”).

Event	Current Deadline for Legislative Election	Proposed Modified Deadline for Legislative Election
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions	March 23, 2022 <i>(not later than 15 days after the last day for filing nomination petitions)</i>	April 12, 2022 <i>(not later than 14 days after the last day for filing nomination petitions)¹⁷</i>
Last day for voters to register before the primary election	May 2, 2022	[no deadline change]
Last day to apply for a mail-in or civilian absentee ballot	May 10, 2022	[no deadline change]
Last day for County Boards of Elections to receive voted mail-in and civilian absentee ballots	May 17, 2022	[no deadline change]
Pennsylvania's 2022 primary election	May 17, 2022 <i>(ten weeks between last date for circulating and filing nomination petitions and primary election)</i>	[no deadline change] <i>(seven weeks between last date for circulating and filing nomination petitions and primary election)</i>
The last day for County Boards of Elections to receive voted military-overseas ballots for the primary election for the primary election	May 24, 2022	[no deadline change]

For the reasons discussed above, *see supra* pages 9-10, Respondents respectfully request that the Court shorten to 3 days the period for appealing from the Commonwealth Court's decisions resolving objections to nomination petitions.

The Department will, of course, make every effort to comply with any schedule that the Court puts in place. To the extent the Court deems it necessary or

¹⁷ *See supra* note 16.

appropriate, Respondents stand ready to provide testimony regarding appropriate and feasible changes to the 2022 primary election calendar, and to assist the Court in determining workable alternatives to the calendars proposed above.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: February 14, 2022

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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 14, 2022

/s/ Robert A. Wiygul
Robert A. Wiygul

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

PHILIP T. GRESSMAN; 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.

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 primary for all offices—statewide, congressional, and state legislative—is scheduled for May 17, 2022.
 10. The current timeline of deadlines leading up to and related 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 Deadline to file objections to nomination petitions is March 15, 2022. (*See* 25 P.S. § 2937.)
- e. The last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions is March 18, 2022. (*See* P.S. § 2937.)
- f. 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.)
- g. The last day for the Commonwealth Court to render decisions involving objections to nomination petitions is March 23, 2022. (*See* 25 P.S. § 2937.)
- h. 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).)
- i. 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, under state law, *see* 25 Pa.C.S. § 3508(a)(1), and April 2, 2022, under federal law, *see* 52 U.S.C. § 20302(a)(8)(A).¹

- j. The last day before the primary election for voters to register is May 2, 2022. (*See* 25 P.S. § 3071.)
 - k. 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).)
 - l. 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).)
 - m. Pennsylvania’s 2022 general primary election is scheduled for May 17, 2022. (*See* 25 P.S. § 2753(a).)
 - n. 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).)
11. All of the deadlines set forth above are required by federal or state law.

¹ As a practical matter, the majority of these military-overseas ballots would typically be sent out on Friday, April 1, 2022. County officials would then process any additional military-overseas ballot requests arriving on the 45th day, sending those ballots out on Saturday, April 2, 2022.

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 statewide and congressional primary election in nine weeks.

14. In order to accomplish this, the Court would need to order a time period for circulating and filing nomination petitions that lasted two weeks, instead of three; and the nominations period would need to start on March 1, spanning two weeks and ending on the recommended revised deadline of March 15.

15. Ideally, the Department and county boards of elections would have an opportunity, before the circulation and filing of nomination petitions begin, to fully update the Statewide Uniform Registry of Electors (SURE) system with information about the new districts. In that event, the computerized tool used to generate nomination petitions would allow candidates to pre-populate all the information needed on the Candidate's Affidavit, as well as the information needed in the preamble portion of the nomination petition page, based on the specific office the candidate is seeking. By contrast, with generic nomination petitions, candidates running in particular districts must manually fill in the District Number line on the Candidate's Affidavit and the District Number line and County of

Signers lines at the top of each nomination petition page. These two lines will be blank when the petition forms are generated and printed. Nonetheless, the computerized tool used to generate the generic nomination petitions will still pre-populate the rest of the information for the candidate's review.

16. The Department believes that, by using generic nomination petitions, the Department could complete its preparations for circulating and filing nomination petitions quickly and in only a couple of days, by March 1, 2022.

17. Although the use of generic nomination petitions is less than ideal, it will allow the election process to proceed in a timely manner, as necessitated under the unusual circumstances of the current election cycle.

18. If the first date for circulating and filing nomination petitions for statewide and congressional races were moved from February 15 to March 1, the Department would need to have a final congressional plan in place by no later than **February 27, 2022**.

19. The Legislative Reapportionment Commission ("LRC") adopted a Final Plan for the legislative districts on February 4, 2022. If this Court were to expedite any briefing and argument on the appeals and enter a final ruling on the legislative Final Plan by **March 18, 2022**, the May 17 primary date could (if the Final Plan is determined to be lawful) also remain in place for the state legislative races.

20. The Court would also need to order a period for circulating and filing nomination petitions that lasted nine days, instead of three weeks; and the nominations period would need to start on March 20, spanning nine days and ending on the recommended revised deadline of March 29.

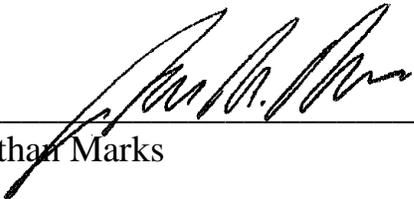
21. Finally, the Court would need to adjust the date by which the County Boards of Elections must send remote military-overseas absentee ballots from March 28, 2022 to April 2, 2022, to allow time for the Secretary to conduct the lottery to determine the position of candidate names and order in which the names will appear on the primary ballot before the remote military-overseas absentee ballots must go out. For administrative efficiencies and to align the calendars as much as possible, it would be preferable to have April 2, 2022, as the deadline for this task under the congressional calendar as well.

22. Having separate primaries would likely cause voter confusion, depress voter participation, and cost taxpayers tens of millions of dollars, and would present county election offices with significant logistical challenges, including the recruitment of poll workers.

23. Should the Court modify existing deadlines, the Department will make every effort to comply with any schedule that the Court puts in place.

The foregoing is true and correct to the best of my knowledge, information, and belief and is subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: February 14, 2022



Jonathan Marks