

IN THE SUPREME COURT OF PENNSYLVANIA

Kerry Benninghoff, individually, and	:	
as Majority Leader of the Pennsylvania	:	
House of Representatives	:	
Petitioner,	:	No. 11 MM 2022
	:	
v.	:	
	:	
2021 Legislative Reapportionment	:	
Commission,	:	
Respondent.	:	

**ANSWER OPPOSING APPLICATION OF
PETITIONER BENNINGHOFF FOR EMERGENCY
RELIEF DIRECTED TO THE 2022 ELECTIONS**

Leader Benninghoff’s Application requests this Court to order that the 2022 elections for the Pennsylvania House and Senate be conducted pursuant to the Districts that this Court approved in 2013, *see Holt v. 2011 Legislative Reapportionment Comm’n*, 67 A.3d 1211 (Pa. 2013) (“*Holt II*”), based upon the 2010 Census, rather than the Final Plan based upon the 2020 Census that the Legislative Reapportionment Commission approved by a bipartisan vote of 4-1 on February 4, 2022. This Court should deny the application for several reasons:

1. There is no reasonable dispute that, as a result of dramatic population changes in Pennsylvania revealed in the 2020 Census, as compared with the 2010 Census, Leader Benninghoff’s Application would have this Court order that unconstitutionally malapportioned districts be used for the 2022 election, notwithstanding the most recent census data. That would violate the constitutional

rights of every citizen of Pennsylvania under Article I, Section 5 and Article II, Section 16 of the Pennsylvania Constitution and may also implicate the Fourteenth Amendment to the United States Constitution.

2. Leader Benninghoff's Application is premised upon the unwarranted assumptions that this Court cannot act in time to decide the appeals from the Legislative Reapportionment Commission's February 4, 2022 Final Plan in time for the primary election to be held, as scheduled on May 17, 2022, and that the Court is likely to vacate the Commission's Final Plan. Neither assumption is true.

A. This Court's scheduling order, entered February 17, 2022, will result in the completion of briefing on March 11, 2022 at 2:00 p.m., and dispenses with oral argument unless otherwise ordered. Thus, this Court is fully capable of entering a decision in mid-March, which, with minor adjustments to the deadlines for filing nominating petitions and other election deadlines, will fully enable the primary election to be held as scheduled on the basis of the new districts under the Legislative Reapportionment Commission's Final Plan. Indeed, at the oral argument regarding the selection of a map for congressional elections, Chief Justice Baer indicated that the Court would move forward with all possible alacrity so that the May 17, 2022 primary would not need to be rescheduled.

B. This Court is unlikely to vacate the Final Plan as a result of the appeals, including that of Leader Benninghoff. As shown in the following charts,

the 2022 Final Plan for both the Senate and the House of Representatives is superior to the plan currently in effect in just about every metric under Article II, § 16 of the Pennsylvania Constitution:

Senate Plan Comparisons

	Current Senate Plan	2022 Senate Plan
Counties Split	25	23
Number of County Splits	53	47
Municipalities Split	2	4
Number of Municipality Splits	11	10
Reock	0.38	0.39
Polsby-Popper	0.27	0.33
Smallest District	243,944	248,858
Largest District	264,160	269,942
Overall Deviation	7.96%	8.11%
Average Deviation	2.3%	2.1%
Partisan Bias	4.1%	3.1%

House Plan Comparisons

	Current House Plan	2022 House Plan
Counties Split	50	45
Number of County Splits	221	186
Municipalities Split	77	54
Number of Municipality Splits	124	92
Reock	0.39	0.42
Polsby-Popper	0.28	0.35
Smallest District	60,111	61,334
Largest District	65,041	66,872
Overall Deviation	7.87%	8.65%
Average Deviation	2.0%	2.1%
Partisan Bias	4.5%	2.3%

Furthermore, the Final Plan for both the House of Representative and Senate shows a significant reduction in partisan bias as compared to the maps approved in *Holt II*, consistent with this Court’s requirement of partisan fairness in *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018), and Article I, § 5 of the Pennsylvania Constitution.¹ The Commission’s decisions on other issues that are the subject of Leader Benninghoff’s Application and Petition for Review are fully supported by the record and by expert opinions that the Commission credited in its 4-1 bipartisan approval of the Final Plan. Therefore, there is a strong likelihood that this Court will affirm.

3. For the above reasons, the current situation is not analogous to the situation that existed when this Court decided *Holt v. 2011 Legislative Reapportionment Commission*, 38 A.3d 711 (Pa. 2012) (“*Holt I*”), as Leader Benninghoff’s Application erroneously asserts.

4. Further, in *Holt I*, the Court only ordered that the 2012 elections should be held under the maps approved for the prior decade *after* the Court

¹ Unlike the Legislative Reapportionment Commission’s Final Plan approved on February 4, 2022, the plan currently in effect did not consider Article I, § 5 of the Pennsylvania Constitution and was drawn without the benefit of this Court’s opinion in *League of Women Voters*. Indeed, many of the districts in the current plan may not have survived this Court’s scrutiny in light of *League of Women Voters*. For that reason, Leader Benninghoff’s request that this Court order the 2022 elections to go forward based on the final plan approved in 2013 is even more problematic.

concluded that the Final Plan approved by the Legislative Reapportionment Commission was contrary to law. The Court has made no such determination in this case. Without such a determination, this Court lacks the power to postpone the effective date of the Final Plan, *In re 1991 Pennsylvania Legislative Reapportionment Comm'n*, 609 A.2d 132, 139 (Pa. 1992). Instead, effective immediately upon an order by this Court affirming the Final Plan, “the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly.” Pa. Const., Art. II, § 17(e).

5. At a minimum, the Application should be denied as premature. In the unlikely event that this Court determines the 2022 Final Plan to be contrary to law, the Court can determine the appropriate remedy at that time, as it did in *Holt I*.

For the above reasons, this Court should deny Leader Benninghoff’s Application.

Respectfully submitted,

February 23, 2022

/s/ Robert L. Byer

Robert L. Byer (PA 25447)
DUANE MORRIS LLP
600 Grant Street, Suite 5010
Pittsburgh, PA 15219
Telephone: 412-497-1083
Email: rlbyer@duanemorris.com

Leah A. Mintz (PA 320732)
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103-4196
Telephone: 215-979-1263
E-mail: LMintz@duanemorris.com

*Counsel for Respondent 2021 Legislative
Reapportionment Commission*

CERTIFICATE OF COMPLIANCE

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 from non-confidential information and documents.

/s/ Robert L. Byer