

IN THE SUPREME COURT OF PENNSYLVANIA

7 WM 2022

**TODD ELLIOTT KOGER, Republican Candidate
April 5, 2022 Special Election PA House District #24,**

Petitioner,

v.

**2021 PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT
COMMISSION,**

Respondent.

**JOANNA E. MCCLINTON'S ANSWER IN OPPOSITION TO
PETITIONER TODD ELLIOT KOGER'S APPLICATION FOR
JOINDER AND CONSOLIDATION**

Joanna E. McClinton, by and through her undersigned counsel, states the following in response to Petitioner Todd Elliot Koger's request that this Court join all current challenges to the Final Plan of the 2021 Legislative Reapportionment Commission, allow for reply briefs, and conduct oral argument on all challenges. Mr. Koger's Application is without merit and should be denied for the following reasons:

1. Mr. Koger's underlying Petition for Review is fatally flawed.

2. Mr. Koger’s Petition for Review seeks relief solely concerning House District 24. Such a localized challenge to an enacted state legislative plan is foreclosed by law. *See Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711, 733 (Pa. 2012) (“*Holt I*”) (“[A] successful challenge must encompass the Final Plan as a whole”); *Albert v. 2001 Legislative Reapportionment Comm’n*, 790 A.2d 989, 995 (Pa. 2002) (“In conducting this review, we must examine the final plan as a whole.”). Moreover, and equally dispositive as to the merits of his Petition, Mr. Koger failed to assert this challenge before the Legislative Reapportionment Commission in the first instance. *See Holt v. Legislative Reapportionment Comm’n*, 67 A.3d 1211, 1216 (Pa. 2013) (“*Holt II*”) (“[W]e will not consider claims that were not raised before the LRC.”).

3. Second, and to the extent Mr. Koger’s Application can be construed as a request that the 2022 legislative elections proceed under districts formed following the 2010 census, this Court has already considered and denied that request in *Benninghoff v. 2021 Legislative Reapportionment Comm’n*, 11 MM 2022. The Court should not reconsider that decision under a new caption.

4. Finally, Mr. Koger’s request for leave to file a Reply Brief and conduct oral argument should be denied.

5. On February 17, 2022, the Court issued an Order setting the briefing schedule for all appeals from the Final Plan of the 2021 Legislative

Reapportionment Commission. That Order further stated that “[n]o reply briefs will be permitted” and that “Petitions for Review will be decided on submitted briefs.”

6. Despite filing his Petition for Review on March 2, 2022, Mr. Koger did not timely contest this briefing schedule established by the Court more than two weeks ago and should not be permitted to do so now.

7. Further, the Court has already considered this exact request in *Covert v. 2021 Legislative Reapportionment Comm’n*, 4 WM 2022. In that case, the petitioner had similarly sought, *via* Application to the Court on March 3, 2022, the opportunity for both oral argument and a reply brief.

8. By Order dated March 4, 2022, the Court denied Covert’s Application and should not now reconsider that decision.

For the above reasons, this Court should deny Mr. Koger's Application in its entirety.

Respectfully Submitted,

/s/ Daniel T. Brier

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Leader of the Democratic Caucus of the
Pennsylvania House of Representatives and
Member of the Legislative Reapportionment
Commission

Date: March 8, 2022

CERTIFICATE OF COMPLIANCE

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 requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Daniel T. Brier

Daniel T. Brier

Date: March 8, 2022

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of March, 2022, I served the foregoing Answer to Application and Joinder upon all counsel via the Court's PACFile system and upon the following *pro se* party via first-class mail in accordance with the requirements of Pa. R. App. P. 121:

Todd Elliott Koger
515 Kelly Avenue
Wilkinsburg, PA 15221

/s/ Daniel T. Brier
Daniel T. Brier

Date: March 8, 2022