
**In the Supreme Court of Pennsylvania
Middle District**

No. 11 MM 2022

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

v.

2021 LEGISLATIVE REAPPORTIONMENT COMMISSION,
Respondent-Appellee.

On Review of The Legislative Reapportionment Commission's Order
Adopting A Final Reapportionment Plan, PA. CONST. art. II, § 17(d)

**PETITIONER'S APPLICATION FOR ORDER LIMITING BRIEFING BY
INTERVENOR JOANNA E. MCCLINTON, LEADER OF THE
DEMOCRATIC CAUCUS OF THE PENNSYLVANIA HOUSE OF
REPRESENTATIVES AND MEMBER OF THE LEGISLATIVE
REAPPORTIONMENT COMMISSION**

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Petitioner respectfully moves¹ this Court for the entry of an order that precludes the filing of a separate Respondent’s Brief by Joanna McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives and a Member of the Legislative Reapportionment Commission (“Commission”). Commissioner McClinton is effectively styled as a Respondent in this case. Given the severe briefing restrictions imposed (including the Court’s order this date denying Petitioner’s motion for leave to file a reply brief), it would be manifestly unjust to permit the filing of two Respondent’s Briefs in defense of the 2021 Final Plan—one filed by the Commission through its counsel, and one by Commissioner McClinton. In the alternative, if Commissioner McClinton does file a separate brief, she should be subject to a more restrictive word limit than the 14,000-word limit normally applicable to briefs.

In further support hereof, Petitioner represents as follows:

1. On March 4, 2022, Commissioner McClinton filed her Notice

¹ On March 9, 2022, Petitioner filed an Answer to Commissioner McClinton’s “Notice of Intervention,” construing her “Notice,” to the extent it announced her intent to file a brief, as an application for leave to file same. The Court rejected the proposed Answer, directing Petitioner to file an application.

of Intervention in this matter. She claimed the right not only to intervene, but also to file her own consolidated answer and brief to all Petitions for Review on March 11, 2022 in accordance with this Court's February 17, 2022 Order.

2. That Order, however, does not authorize the filing of an intervenor's brief. The only responsive filings the Order authorized were a "consolidated answer, as well as a consolidated brief, filed by the Legislative Reapportionment Commission, as Respondent..." *Id.*

3. Commissioner McClinton voted for the 2021 Final Plan and is properly styled as a Respondent alongside the Commission. The 2021 Final Plan is being adequately defended by the Commission and its counsel. Any additional brief filed by Commissioner McClinton would likely prove redundant. *See Holt v. 2011 Legislative Reapportionment Commission*, 67 A.3d 1211, 1225 n.12 (Pa. 2013) (finding redundancy in the filings by members of the LRC and that the LRC as a body zealously defended the plan in a 96-page brief). In that respect, it is noteworthy that Commissioner McClinton's Answer in Opposition to Petitioner's Application to Amend the Court's February 17, 2022 Order raised largely the same arguments and points the Commission had raised in its Answer

a day earlier.

4. To the extent Commissioner McClinton does raise new or different arguments in defense of the 2021 Final Plan than those raised by the Commission, the effect would be to functionally allow the Commission two briefs (each with a separate 14,000-word limit) to defend the Final Plan. This Court set strict briefing restrictions in this case, requiring the Petitioner's Brief to be filed on March 7, the Commission's Respondent's Brief filed on March 11, and no further briefs or argument. The Court further denied, by order dated March 9, Petitioner's application for leave to file a reply and for argument. Under these circumstances, it would be manifestly unjust to allow *two* briefs to be filed responding to Petitioner's without any right of Petitioner to reply.

5. Alternatively, if the Court does permit the filing of a second Respondent's Brief, the Court should at least require the Commission and Commissioner McClinton to share the same 14,000 word limit, or should at the very least limit her brief to a lesser word limit (e.g., 5,000 words) in the interest of fundamental fairness.

For these reasons, this Court should reject any brief filed by Commissioner McClinton as unnecessary, duplicative, and in

contravention of this Court's February 17, 2022 Order—or, in the alternative, require McClinton to share the Commission's 14,000 word limit for briefing.

Dated: Philadelphia, Pennsylvania
March 9, 2022

/s/ Jeffrey Duffy

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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 9th day of March, 2022, by PACFile on all counsel of record.

/s/ Jeffrey Duffy
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