

IN THE SUPREME COURT OF PENNSYLVANIA

No. 142 MM 2021

**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,

vs.

**VERONICA DEGRAFFENREID, IN HER CAPACITY AS ACTING
SECRETARY OF THE COMMONWEALTH; AND JESSICA MATHIS, IN
HER CAPACITY AS DIRECTOR FOR THE PENNSYLVANIA BUREAU OF
ELECTION SERVICES AND NOTARIES,**

Respondents.

**APPLICATION FOR EXPEDITED REVIEW OF THIS COURT'S EXERCISE
OF EXTRAORDINARY JURISDICTION OR KING'S BENCH POWER**

Application for Exercise of Extraordinary Jurisdiction or King's Bench Power
Seeking Judicial Intervention in Congressional Redistricting,
From Commonwealth Court Docket No. 465 MD 2021

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Pennsylvania Rule of Appellate Procedure 123, Petitioners ask this Honorable Court to hear this matter on the expedited schedule described below. An expedited schedule is necessary to permit Pennsylvania's 2022 Congressional primary elections to proceed as scheduled. In support of this application, Petitioners state as follows:

1. On December 17, 2021, Petitioners filed this action in the Commonwealth Court, seeking relief under the Pennsylvania Constitution for the unconstitutional malapportionment of Pennsylvania's current congressional district map. On December 21, 2021, Petitioners filed an application asking this Court to exercise its King's Bench power or extraordinary jurisdiction over Petitioners' Complaint because the schedule established by the Commonwealth Court would effectively deny the parties any opportunity to appeal that Court's judgment to this Court and thereby obtain relief for the 2022 elections. As time is of the essence, Petitioners also ask that this Court hear this matter on an expedited schedule.

2. Specifically, Respondents in this proceeding have previously represented that "the Department of State must receive a final and legally binding congressional district map *no later than January 24, 2022.*" Resp'ts' Prelim. Obj. to Pets.' Pet. for Rev., *Carter v. Degraffenreid*, No. 132 MD 2021, ¶ 15 (Pa. Commw. Ct. July 1, 2021) (emphasis added). Respondents further represented that,

“if a new congressional district map is signed into law *by the end of December 2021*, and if the courts provide expedited review of any challenges to that map, the map is likely to be final and binding by the January 24, 2022 date.” *Id.* ¶ 17 (emphasis added). The deadlines that Respondents identified were tethered to the current primary election calendar. The first deadline on that calendar is just weeks away—February 15, 2022. *See* 25 P.S. § 2873. That is the date on which candidates seeking to appear on the ballot for the 2022 primary election can begin circulating their nomination papers. That period is scheduled to conclude on March 8, 2022. *See id.*

3. There is insufficient time for the political process to produce a new, legally binding congressional map before the primary nomination process begins. The General Assembly adjourned its legislative session on December 15, 2021, without enacting a new congressional district map with the right number of congressional districts.¹ Although the House State Government Committee voted a preliminary congressional district plan out of committee on December 15, this plan has not been brought up for first consideration in the House, and it cannot be considered by the full House until the General Assembly reconvenes. The General

¹ *See* Pa. House of Representatives, *House Session Days*, at <https://www.legis.state.pa.us/SessionDays.cfm?Chamber=H> (last visited Dec. 20, 2021); Pa. House of Representatives, *Senate Session Days*, at <https://www.legis.state.pa.us/SessionDays.cfm?Chamber=S> (last visited Dec. 20, 2021).

Assembly's next legislative session does not begin until January 4, 2022.² As a result, at this time, there is no prospect that the General Assembly will pass a final congressional plan and the Governor will sign that plan into law before preparations for the primary election must begin. *See* 101 Pa. Code § 9.81 (to become a law, a bill must come for consideration before each house of the General Assembly at least three times on three different legislative days). The legislative process thus cannot produce a congressional plan for review by Respondents' January 24, 2022 deadline.

4. A judicial remedy in this Court is therefore required to address the unconstitutional malapportionment of Pennsylvania's congressional districts. Moreover, to ensure that the primary process can proceed as currently scheduled, the judicial process must be expedited. To that end, Petitioners ask that the Court enter the following schedule for further proceedings in this Court:

- December 27, 2021: Applications to intervene due.
- January 3, 2022: Answers to applications to intervene due.
- January 10, 2022: Parties' proposed congressional redistricting plans and briefs in support of such plans to be filed.

² *See* Pa. House of Representatives, *House Session Days*, at <https://www.legis.state.pa.us/SessionDays.cfm?SessionYear=2022&SessionInd=0&Chamber=H> (last visited Dec. 20, 2021); Pa. House of Representatives, *Senate Session Days*, at <https://www.legis.state.pa.us/SessionDays.cfm?SessionYear=2022&SessionInd=0&Chamber=S> (last visited Dec. 20, 2021).

- January 17, 2022: Parties' opposition briefs to be filed.
- January 21, 2022: Oral argument to consider all timely filed proposed congressional redistricting plans.
- January 24, 2022: Court decision selecting congressional redistricting plan from those plans that were timely filed by the parties.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that the Court enter their requested expedited schedule or such other schedule that will enable a new, constitutional congressional redistricting plan to be adopted no later than January 24, 2022.

Dated: December 21, 2021

Respectfully submitted,

By: /s/ Kim M. Watterson

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Counsel for Petitioners

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 than non-confidential information and documents.

Submitted by: Kim M. Watterson

Signature: /s/ Kim M. Watterson

Name: Kim M. Watterson

Attorney No. PA 63552_____

PROOF OF SERVICE

On December 21, 2021, I caused a copy of the foregoing to be served on the following parties via the electronic filing system, PACFile:

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