

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 464 M.D. 2021

Carol Ann Carter; Monica Parrilla; Rebecca Poyourow; William Tung; Roseanne Milazzo; Burt Siegel; Susan Cassanelli; Lee Cassanelli; Lynn Wachman; Michael Guttman; Maya Fonkeu; Brady Hill; Mary Ellen Bachunis; Tom DeWall; Stephanie McNulty; and Janet Temin,

Petitioners,

vs.

Leigh Chapman, in Her Official Capacity as the Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Official Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

No. 465 M.D. 2021

Philip T. Gressman; Ron Y. Donagi; Kristopher R. Tapp; Pamela A. Gorkin; David P. Marsh; James L. Rosenberger; Amy Myers; Eugene Boman; Gary Gordon; Liz McMahon; Timothy G. Feeman; and Garth Isaak

Petitioners,

vs.

Leigh Chapman, in her Official Capacity as the Acting Secretary of the Commonwealth of Pennsylvania ; and Jessica Mathis, in Her Official Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

**PRE-HEARING RESPONSIVE BRIEF OF SENATE REPUBLICAN
INTERVENORS JAKE CORMAN, PRESIDENT PRO TEMPORE OF THE
PENNSYLVANIA SENATE, AND KIM WARD, MAJORITY LEADER OF
THE PENNSYLVANIA SENATE**

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Majority Leader of the Pennsylvania Senate*

Pursuant to the Court’s January 14, 2022 order, Intervenors Jake Corman, President *Pro Tempore* of the Pennsylvania Senate, and Kim Ward, Majority Leader of the Pennsylvania Senate (together, “Senate Republican Intervenors”), submit this pre-hearing responsive brief.

ARGUMENT

On January 24, 2022, in tandem with their opening brief, the Senate Republican Intervenors provided this Court with the congressional redistricting plan that is embodied in HB 2146 (the “Legislative Plan”). At the time, the Pennsylvania House of Representatives had passed HB 2416 and the Senate had given it first and second consideration. Later on the same day (January 24, 2022), the Senate gave HB 2416 third consideration and passed it. HB 2146 was then presented to the Governor for his consideration. The Governor has not yet acted on it.¹

Having now been passed by not only the House, but also the Senate, the Legislative Plan is entitled to an even greater level of deference and special weight than before, as a reflection of the legislative process and the will of the people’s elected representatives.

As the Senate Republican Intervenors explained in their opening brief, congressional “redistricting is a legislative function, to be performed in accordance

¹ See Bill History for HB 2416, available at https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2021&sind=0&body=H&type=B&bn=2146 (last visited Jan. 26, 2022).

with the State’s prescriptions for lawmaking.” *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 808 (2015). And Pennsylvania’s legislative power (and therefore its power to engage in congressional redistricting) is vested exclusively in the General Assembly. *See* Pa. Const. art. II, § 1. The result is that when, as here, a court is “left with the unwelcome obligation of performing in the legislature’s stead, while lacking the political authoritativeness that the legislature can bring to the task,” *see Connor v. Finch*, 431 U.S. 407, 415 (1977), it should give special weight to a plan that has moved through the state’s legislative process, as long as that plan meets the applicable redistricting requirements.

In this case, for the reasons that are explained in the Senate Republican Intervenors’ opening brief (and the House Republican Intervenors’ opening brief), the Legislative Plan does, in fact, meet all of those requirements, including the requirements regarding compact and contiguous territory, population equality, and respect for the boundaries of political subdivisions. What is more, no other party or *amici* has presented the Court with a proposed redistricting plan that has made its way through *any* part of the legislative process, let alone one that both the Senate and House have passed. Unlike the other proposed plans, therefore, the Legislative Plan is entitled to deference and special weight, in recognition of the General Assembly’s constitutional prerogative to engage in redistricting. *See, e.g., Donnelly v. Meskill*, 345 F. Supp. 962, 965 (D. Conn. 1972) (faced with obligation to select

congressional redistricting map after state’s governor vetoed legislature’s map, court adopted the legislature’s proposed plan, explaining that “[t]he legislative adoption of Public Act 807 tips the scales in favor of the plan” and observing that the plan had “the added advantage that it is basically the plan adopted by the legislature”). Indeed, the Legislative Plan reflects a deliberative, legislative process, which involves negotiations, compromise, and policy judgments, and which the people’s elected representatives have undertaken in order to memorialize and implement state policy that reflects the will of their constituents.

CONCLUSION

For the foregoing reasons and the reasons stated in their opening brief, the Senate Republican Intervenors respectfully request that the Court adopt the Legislative Plan.

Dated: January 26, 2022

Respectfully submitted,

/s/ Anthony R. Holtzman

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CERTIFICATION 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/ Anthony R. Holtzman
Anthony R. Holtzman

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by PACFile eService as follows:

All counsel of record

Date: January 26, 2022

/s/ Anthony R. Holtzman
Anthony R. Holtzman