

IN THE SUPREME COURT OF PENNSYLVANIA

No. _____, Misc. Docket 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 THE 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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**APPLICATION FOR THE EXERCISE OF
EXTRAORDINARY JURISDICTION OR KING'S BENCH POWER**

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF
PENNSYLVANIA:

Petitioners—registered voters and leading mathematicians and scientists in the Commonwealth of Pennsylvania—ask this Honorable Court to accept jurisdiction over a matter of utmost importance and urgency to the democratic foundation of the Commonwealth: the unconstitutional malapportionment of Pennsylvania's current congressional district map and the failure of the General Assembly to adopt a lawful congressional district map in time for the orderly administration of the 2022 primary election.

Pennsylvania's congressional map was last drawn in 2018, using data from the 2010 Census. Based on the results of the 2020 Census, Pennsylvania has lost a congressional seat. Pennsylvania therefore has no choice but to redraw its existing congressional map to include the correct number of districts before the 2022 primary election. Without a new redistricting plan, candidates do not know where to run and voters cannot identify or evaluate their candidates. Petitioners and all Pennsylvania voters, moreover, currently reside in severely malapportioned districts that deviate by as much as 95,000 persons from the ideal district population.

The current map's malapportionment violates the Pennsylvania Constitution. The Free and Fair Elections Clause requires that congressional districts be "as nearly

equal in population as practicable.” *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 809, 814–16 (Pa. 2018) [hereinafter *League of Women Voters I*]; see Pa. Const. art. I, § 5; *id.* art. II, § 16. The current map’s districts, which vary by tens of thousands of voters, do not come close to satisfying this requirement. The Petition Clause of the Pennsylvania Constitution also provides Commonwealth residents a right to associate. See *id.* art. I, § 20. By lacking both equally populated districts and the correct number of districts, the current map impairs voters’ ability to associate with other voters who live in their as-yet-undrawn districts, and with the candidates who will run for office in these unknown districts. The Pennsylvania Constitution, moreover, guarantees Commonwealth residents equal protection of the law. See *id.* art. I, § 1; *id.* art. II, § 26. The current map violates these guarantees because its malapportionment means that the power of Commonwealth residents’ votes varies significantly based on where those residents live.

Although “the primary responsibility and authority” for redistricting “rests squarely with the state legislature,” *League of Women Voters I*, 178 A.3d at 821–22, on December 15, 2021—the final day of the 2021 legislative session—the General Assembly adjourned without adopting a new congressional district plan. The House State Government Committee voted a preliminary congressional district plan out of committee on December 15, but this plan has not been brought up for first

consideration in the House, and it cannot be until the General Assembly reconvenes in January. The filing period for candidate nomination papers for the 2022 primary election is scheduled to commence on February 15, 2022. Respondents—the Acting Secretary of the Commonwealth and the Director of the Bureau of Election Services and Notaries—previously represented that a new congressional district map must be enacted by late December 2021, and a final congressional district map signed into law by January 24, 2022, to ensure that the 2022 primary election can go forward as planned.

Because the General Assembly adjourned without adopting a new congressional plan and there is no evidence that a new plan can or will be adopted in the coming weeks, there is no realistic prospect that a new congressional district map will be adopted by the General Assembly and signed by the Governor by January 24, 2022. Accordingly, judicial action is needed to ensure that Petitioners and other Pennsylvania voters are not deprived of their rights under the Free and Equal Elections Clause, the Petition Clause, and the equal-protection guarantees of the Pennsylvania Constitution.

Petitioners have filed a petition for review in the Commonwealth Court, but they now ask this Court to exercise its extraordinary jurisdiction or King's Bench power 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 before the 2022 elections. The Commonwealth Court’s December 20, 2021 scheduling order sets January 31, 2022—a full week *after* Respondents’ January 24 deadline for final adoption of a congressional district plan—as the date of an evidentiary hearing on proposed plans, with the Commonwealth Court’s final judgment presumably to follow sometime in February 2022. That clearly would leave no time for a party to file an appeal and have it resolved by this Court before the 2022 primary election.¹

Petitioners thus ask that this Court (a) declare the existing congressional district plan unconstitutional; (b) enjoin the use of Pennsylvania’s current congressional district plan in any future election; (c) adopt Petitioners’ proposed schedule, or a schedule the Court otherwise deems appropriate to resolve Petitioners’ claims in time for the orderly administration of the 2022 primary election; and (d) implement a lawful congressional district plan.

BASIS FOR JURISDICTION

This Court has jurisdiction to act on the Petitioners’ request for judicial intervention in congressional redistricting on either or both of two bases—

¹ A different set of Pennsylvania voters filed suit in the Commonwealth Court earlier this year, seeking to have that court adopt new congressional districts, but the court dismissed the case. *Carter v. Degraffenreid*, No. 132 MD 2021, 2021 WL 4735059 (Pa. Commw. Ct. Oct. 8, 2021). Ms. Carter and other voters recently filed a new suit in the Commonwealth Court, on December 17, 2021. *See* Pet. for Rev., *Carter v. Degraffenreid*, No. 464 MD 2021 (Pa. Commw. Ct. Dec. 17, 2021). On December 20, 2021, the Commonwealth Court consolidated the latter *Carter* with Petitioners’ suit and issued a scheduling order.

extraordinary jurisdiction or King’s Bench power. “It is well-established that ‘[a]ll Pennsylvania courts derive power or authority, and the attendant jurisdiction over the subject matter, from the Constitution and the laws of the Commonwealth.’” *Commonwealth v. Williams*, 129 A.3d 1199, 1205–06 (Pa. 2015) (quoting *In re Bruno*, 101 A.3d 635, 659 (Pa. 2014)). Under Article V, Section 2 of the Pennsylvania Constitution, this Court “shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth.” Pa. Const. art. V, § 2(a). Section 2 further provides that this Court “shall have such jurisdiction as shall be provided by law.” *Id.* § 2(c).

Extraordinary Jurisdiction: “[I]n any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance,” this Court may “assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.” 42 Pa. C.S. § 726. This Court has previously exercised its extraordinary jurisdiction over congressional redistricting challenges to ensure that voters do not have to vote in unconstitutional districts. *See, e.g., League of Women Voters I*, 178 A.3d at 821–22; *Erfer v. Commonwealth.*, 794 A.2d 325, 328 (Pa. 2002), *abrogated by League of Women Voters I*; *Mellow v. Mitchell*, 607 A.2d 204, 205–06 (Pa. 1992).

There are few matters of more urgency or public importance to the Commonwealth than the unconstitutionality of the existing congressional district map. The 2022 primary is just weeks away. Candidate filing deadlines are imminent. Respondents have publicly represented that, for timely and efficient administration of the primary, “the Department of State must receive a final and legally binding congressional district map no later than January 24, 2022.” Resp’ts’ Prelim. Objs. to Pets.’ Pet. for Rev., *Carter v. Degraffenreid*, No. 132 MD 2021, ¶¶ 13–17 (Pa. Commw. Ct. July 1, 2021).

Before filing this Application, Petitioners filed a petition for review in the Commonwealth Court. But as Petitioners explained in their Commonwealth Court petition, they planned to file this Application because there is no time for this case to run the ordinary course, with two levels of judicial review. On December 20, 2021, the Commonwealth Court issued a scheduling order for judicial redistricting that cannot meet Respondents’ January 24, 2022 deadline for a final, legally binding plan. The order gives parties until January 28, 2022 to file proposed congressional district plans with the court, and the General Assembly and Governor until January 30, 2022, to enact a plan through the political process. *See Order, Carter v. Degraffenreid*, Nos. 464 MD 2021, 465 MD 2021 (Pa. Commw. Ct. Dec. 20, 2021). If the political process fails by the Commonwealth Court’s deadline, the court will not begin to consider all timely proposed plans until January 31, 2022, when the

court would conduct an evidentiary hearing. *Id.* Moreover, any plan the Commonwealth Court adopts would be subject to challenge in this Court on appeal, but the Commonwealth Court’s schedule could render it impossible to get effective relief in time for the 2022 primary.

Absent this Court’s prompt intervention, there will not be a valid congressional plan with the correct number of districts in time for the 2022 primary, and the lack of such a plan would violate the Pennsylvania Constitution’s democratic guarantees.

King’s Bench: This Court’s King’s Bench authority is codified in Section 502 of the Judicial Code (“General powers of Supreme Court”), which states:

The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King’s Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise the following powers:

- (1) All powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law.
- (2) The powers vested in it by statute, including the provisions of this title.

42 Pa. C.S. § 502. Pursuant to its King’s Bench jurisdiction, “the justices of the [Supreme] Court have cognizance of all causes statewide, whether civil or criminal.”

In re Bruno, 101 A.3d 635, 670 (Pa. 2014) (citation omitted). The King’s Bench power “aids the Court in its duty to keep all inferior tribunals within the bounds of their own authority.” *Id.* In keeping with that duty, this Court’s “principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth.” *Id.* at 675.

This Court is further empowered to act immediately to fulfill these obligations, and it need not wait for a matter to run the ordinary course of an appeal. As this Court has explained, “King’s Bench allows the Supreme Court to exercise authority commensurate with its ‘ultimate responsibility’ for the proper administration and supervision of the judicial system” and, thus, “[i]n certain instances, the Court cannot suffer the deleterious effect upon the public interest caused by delays incident to ordinary processes of law, or deficiencies in the ordinary processes of law making those avenues inadequate for the exigencies of the moment.” *In re Bruno*, 101 A.3d at 670–71 (quoting *In re Avellino*, 690 A.2d 1138, 1144 n.7 (Pa. 1997)). Hence, “[t]he power of general superintendency over inferior tribunals may be exercised where no matter is pending in a lower court.” *Avellino*, 690 A.2d at 1140 (internal quotation marks and citations omitted). Most simply put, this Court will “employ [its] King’s Bench authority when the issue requires timely intervention by the court of last resort of the Commonwealth and is one of public

importance.” *In re Bruno*, 101 A.3d at 670 (citing *In re President Judge for 30th Jud. Dist.*, 216 A.2d 326, 326 (Pa. 1966)).

As explained above, there is not adequate time for the Commonwealth Court to adjudicate Petitioners’ claims while preserving the parties’ rights to appeal to this Court. Because this Court’s King’s Bench powers are broad, authorizing it to order whatever relief is needed to prevent injustice, *see In re Bruno*, 101 A.3d at 675, it should use those broad powers to remedy an unconstitutional congressional district map when, as here, the General Assembly has failed to act and an election is imminent.

PARTIES

Petitioners are some of Pennsylvania’s leading professors, practitioners, and research scientists in mathematics, statistics, and geography—including two award-winning University of Pennsylvania mathematicians and the Chairs of the Mathematics Departments at St. Joseph’s University, Lafayette College, and Lehigh University. Petitioners believe that high-performance computers and cutting-edge algorithmic techniques can and should be used to thwart gerrymandering, streamline and accelerate the mapmaking process, and promote fair and effective representation for all Pennsylvania residents. Petitioners are also United States citizens and registered voters in the Commonwealth of Pennsylvania who reside in congressional districts that were most recently redrawn in 2018, using population data from the

2010 Census. The 2020 Census Redistricting Data shows that each Petitioner now lives in a district that is unconstitutionally malapportioned.

Petitioner Philip T. Gressman is a registered voter who resides in Delaware County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Gressman is a Professor of Mathematics at the University of Pennsylvania, where he teaches courses on mathematical analysis. Among other subjects, Dr. Gressman conducts research on geometric analysis, which deals with quantifying various features of irregular shapes and structures. He has received a National Science Foundation Research Fellowship and Postdoctoral Fellowship, as well as over ten teaching awards. Dr. Gressman received his Ph.D. in Mathematics from Princeton University.

Petitioner Ron Y. Donagi is a registered voter who resides in Montgomery County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Donagi is the Thomas A. Scott Professor of Mathematics at the University of Pennsylvania, where he teaches courses on mathematical physics and conducts research on algebraic geometry, among other subjects. He has published 109 articles and eight books. Dr. Donagi is the Graduate Chair of the University of Pennsylvania's Department of Mathematics, and he has served previously as the Undergraduate Chair. Dr. Donagi received his Ph.D. in Mathematics from Harvard University.

Petitioner Kristopher R. Tapp is a registered voter who resides in Delaware County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Tapp is a Professor and Chair of the Mathematics Department at St. Joseph's University, where he conducts research that includes mathematical analyses of Pennsylvania's voting districts. He has been invited to present research at various institutions across the United States, including at the American Mathematical Society's Special Session on the Mathematics of Redistricting. Dr. Tapp received his Ph.D. in Mathematics from the University of Pennsylvania.

Petitioner Pamela Gorkin is a registered voter who resides in Union County and in Congressional District 12, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Gorkin is a Professor of Mathematics at Bucknell University, where she conducts research on operator theory on function spaces, with a focus on the geometry of curves, and teaches courses in linear algebra and topology, among other topics. She has presented research internationally and has conducted research supported by grants from the National Science Foundation. Dr. Gorkin has served on the American Mathematical Society's Committee on the Profession and has received teaching awards at multiple universities. Dr. Gorkin received her M.S. in Statistics and Ph.D. in Mathematics, both from Michigan State University.

Petitioner David P. Marsh is a registered voter who resides in Union County and in Congressional District 12, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Marsh is a Professor Emeritus of Geography and Environmental Studies at Bucknell University, where his teaching includes applied geographic information systems (GIS) and spatial statistics with a focus on optimization methods and statistics. Dr. Marsh received his Ph.D. in Geography from Pennsylvania State University.

Petitioner James L. Rosenberger is a registered voter who resides in Centre County and in Congressional District 12, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Rosenberger is a Professor Emeritus of Statistics at Penn State University, where his expertise is in applied statistics. He is the Director of the National Institute of Statistical Sciences and a Fellow of both the American Association for the Advancement of Science and the American Statistical Association, which also honored him with its Founders Award. Dr. Rosenberger received his Ph.D. in Biometry from Cornell University.

Petitioner Amy Myers is a registered voter who resides in Philadelphia County and in Congressional District 3, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Myers is a Senior Lecturer in Mathematics at Bryn Mawr College, where she teaches statistics for data science, graph theory, and enumerative combinatorics. Dr. Myers serves on the Data Science Program Steering

Committee for Bryn Mawr College and is Bryn Mawr's Math Program Coordinator. Dr. Myers received her Ph.D. in Mathematics from Dartmouth College.

Petitioner Eugene Boman is a registered voter who resides in Dauphin County and in Congressional District 10, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Boman is an Associate Professor of Mathematics at Penn State University, Harrisburg Campus, where he teaches and researches, among other topics, numerical analysis, linear algebra, and real analysis. He has served on the editorial boards of multiple journals and has been awarded the Mathematical Association of America's Carl B. Allendoerfer Award for excellence in publication of an expository article. Dr. Boman received his Ph.D. in Mathematics from the University of Connecticut.

Petitioner Gary Gordon is a registered voter who resides in Northampton County and in Congressional District 7, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Gordon is the Head of the Mathematics Department and Marshall R. Metzgar Professor of Mathematics at Lafayette College, where he teaches and researches combinatorics, geometry, and algebra. He has lectured regarding the mathematics of apportionment, with a concentration on algorithms. Dr. Gordon received his Ph.D. in Mathematics from the University of North Carolina.

Petitioner Liz McMahon is a registered voter who resides in Northampton County and in Congressional District 7, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. McMahon is a Professor of Mathematics at Lafayette College, where she teaches and researches combinatorics, finite geometry, and symmetry groups. She has received multiple teaching awards, including the Mathematical Association of America's James P. Crawford Award for Distinguished Teaching of Mathematics. Dr. McMahon received her Ph.D. in Mathematics from the University of North Carolina.

Petitioner Timothy G. Feeman is a registered voter who resides in Montgomery County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Feeman is a Professor of Mathematics and Statistics at Villanova University, where he teaches, among other courses, differential equations, linear algebra, and advanced calculus. Dr. Feeman's research explores the connections between mathematics and cartography, and he developed a course in Cartographiometry. He has received the Mathematical Association of America's George Pólya Award for Expository Writing. Dr. Feeman received his Ph.D. in Mathematics from the University of Michigan.

Petitioner Garth Isaak is a registered voter who resides in Montgomery County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Isaak is the Chair of the Mathematics

Department and Professor of Mathematics at Lehigh University, where he teaches courses in graph theory and applied linear algebra. Dr. Isaak conducts research in the fields of graph theory and combinatorics. He is a Fellow of the Institute for Combinatorics and Its Applications. Dr. Isaak received his Ph.D. in Mathematics from Rutgers University.

Respondent Veronica Degraffenreid is the Acting Secretary of the Commonwealth and is sued in her official capacity only. In that capacity, Acting Secretary Degraffenreid is charged with general supervision and administration of Pennsylvania's elections and election laws. Acting Secretary Degraffenreid is Pennsylvania's Chief Election Official and a member of the Governor's Executive Board. Among her numerous responsibilities in administering elections, Acting Secretary Degraffenreid is responsible for receiving election results from counties for each congressional district in the Commonwealth, and tabulating, computing, canvassing, and certifying those results. 25 P.S. § 3159.

Respondent Jessica Mathis is the Director for the Bureau of Election Services and Notaries, a branch of the Pennsylvania Department of State, and is sued in her official capacity only. In that capacity, Director Mathis is charged with supervising and administering the Commonwealth's elections. The Bureau of Election Services and Notaries is responsible for planning, developing, and coordinating the statewide implementation of the Election Code.

FACTUAL AND LEGAL BACKGROUND

I. Pennsylvania's Current Congressional Plan Is Malapportioned.

This Court adopted Pennsylvania's current congressional district map in 2018, after holding that the congressional district map enacted in 2011 by the General Assembly and signed into law by former Governor Corbett was a partisan gerrymander that violated Pennsylvania's Constitution. *See League of Women Voters of Pa. v. Commonwealth*, 181 A.3d 1083, 1086 (Pa. 2018) ("*League of Women Voters II*"). Based on the results of the 2020 Census, Pennsylvania's current congressional district map no longer has the correct number of congressional districts. The current map has 18 congressional districts, *see id.* at 1089–121, but Pennsylvania was apportioned 17 congressional seats following the 2020 Census.² Pennsylvania, moreover, now has 13,002,700 residents, which means that the ideal district population is either 764,864 or 764,865 persons for each of Pennsylvania's 17 congressional districts. Pennsylvania's congressional districts vary in population by as much as 95,000 residents, and none of the current districts has either 764,864 or 764,865 residents. All the Petitioners reside and intend to vote in a congressional district that the 2020 Census Data identifies as significantly malapportioned.

II. Pennsylvania's Current Congressional Plan Violates the Pennsylvania

² *See* U.S. Dep't of Commerce, U.S. Census Bureau, *Table 1. Apportionment Population and Number of Representatives By State: 2020 Census*, <https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-table01.pdf> (last visited Dec. 10, 2021).

Constitution.

Under the Free and Equal Elections Clause of the Pennsylvania Constitution, “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5. The Pennsylvania Constitution establishes legal requirements for legislative districts, which this Court has extended to congressional districts. Pa. Const. art. II, § 16; *League of Women Voters I*, 178 A.3d at 816–17. These include the requirement that districts be “as nearly equal in population as practicable.” Pa. Const. art. II, § 16. To fulfill this equal-population criterion, congressional districts must be drawn “by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share.” *League of Women Voters I*, 178 A.3d at 809 (quotation marks omitted). Although this case is brought solely under the Pennsylvania Constitution, Article I, Section 2 of the United States Constitution likewise has been interpreted to require equipopulous congressional districts. *See Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964).

The current congressional plan fails to meet this criterion. Petitioners’ districts, and all other districts in the plan, vary by as much as tens of thousands of persons relative to one another and to the ideal district population. And the cause of these deviations from population equality is not an attempt to balance neutral

redistricting criteria, *see League of Women Voters*, 178 A.3d at 816–17, but rather the political branches’ failure to act. The current plan thus violates the Free and Equal Elections Clause.

The Pennsylvania Constitution also provides Commonwealth residents “a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.” Pa. Const. art. I, § 20. In many respects, the associational rights protected by the Pennsylvania Constitution are broader than those protected by the Federal Constitution. *See Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981) (“It is small wonder, then, that the rights of freedom of speech, assembly, and petition have been guaranteed since the first Pennsylvania Constitution, not simply as restrictions on the powers of government, as found in the Federal Constitution, but as inherent and ‘invaluable’ rights of man.”); *see also DePaul v. Commonwealth*, 969 A.2d 536, 589 (Pa. 2009) (noting that the Pennsylvania Constitution “provides broader protections of expression than the related First Amendment guarantee in a number of different contexts.”).

The lack of a lawfully apportioned congressional plan in the Commonwealth means that neither potential candidates for office in the 2022 primary and general elections, nor Petitioners as voters in those elections, know where the boundaries of

constitutional congressional districts lie. Potential candidates do not know where they will be able to run and cannot identify their constituents. Petitioners, in turn, do not know who will be running in their districts and cannot identify their fellow district residents. Petitioners are therefore deprived of the ability to associate with other voters who live in their lawful congressional districts, or to associate with those candidates who will run for office in their districts—again, for no reason other than the political branches’ failure to act. Petitioners’ constitutional right to associate thus has been burdened without any legitimate or compelling state interest for doing so.

The Pennsylvania Constitution also affords Commonwealth residents the equal protection of its laws. Article I, Section 1 of the Constitution states, “All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” Pa. Const. art. I, § 1. Article II, Section 26 provides that “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” *Id.* art. II, § 26.

Because Petitioners’ districts, and all other districts in the current plan, vary by as much as tens of thousands of persons relative to one another and to the ideal

district population, the weight of a given Commonwealth citizen's vote also varies significantly based on where that citizen lives. By diluting the power of Commonwealth citizens' votes, based on where those residents live, the congressional district plan violates the Pennsylvania Constitution's equal-protection guarantees, without any legitimate or compelling state interest for doing so.

III. A Lawful Congressional Plan Cannot Be Timely Adopted Without the Court's Intervention.

In a July 1, 2021 filing before the Commonwealth Court, Respondents represented that “to help the counties reduce errors, allow for timely notice to candidates, and permit proper implementation of the new congressional districts, . . . 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). Respondents' deadlines were tethered to the current primary calendar, whose initial deadlines are just weeks away: Nomination papers for candidates seeking to appear on the ballot for the 2022 primary election are set to be circulated beginning on

February 15, 2022, and are due by March 8, 2022. *See* 25 P.S. § 2873.

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.³ 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 until the General Assembly reconvenes. The General Assembly's next legislative session does not begin until January 4, 2022.⁴ At this time, there is no realistic 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 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 plan that could meet Respondents' January 24, 2022 deadline.

A judicial remedy in this Court is therefore required to ensure that the 2022

³ *See* Pa. House of Representatives, *House Session Days: December 15, 2021*, <https://www.legis.state.pa.us/SessionDays.cfm?Chamber=H> (last visited Dec. 20, 2021); Pa. House of Representatives, *Senate Session Days: December 15, 2021*, <https://www.legis.state.pa.us/SessionDays.cfm?Chamber=S> (last visited Dec. 20, 2021).

⁴ *See* Pa. House of Representatives, *House Session Days: January 4, 2022*, <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: January 4, 2022*, <https://www.legis.state.pa.us/SessionDays.cfm?SessionYear=2022&SessionInd=0&Chamber=S> (last visited Dec. 20, 2021).

primary can proceed as scheduled. To that end, Petitioners propose 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.
- 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.

RELIEF REQUESTED

The Petitioners respectfully request that this Court:

- a. Grant their application for exercise of the Court's extraordinary jurisdiction or King's Bench power;
- b. Declare that the current configuration of Pennsylvania's congressional districts violates Article I, Section 1; Article I, Section 5; Article I, Section 20; and Article II, Section 26 of the Pennsylvania Constitution;
- c. Permanently enjoin Respondents, their officers, agents, employees, attorneys, successors in office, and all persons acting in concert with each or any of

them, from conducting a primary or general election in 2022 or thereafter using Pennsylvania's current congressional districting plan or any other congressional districting plan that violates the Pennsylvania Constitution;

d. Adopt Petitioners' proposed schedule, or a schedule the Court otherwise deems appropriate, to ensure a judicial remedy for Petitioners' claims in sufficient time to allow for the orderly administration of the 2022 primary election;

e. Implement a new congressional plan that complies with Article I, Section 1; Article I, Section 5; Article I, Section 20; and Article II, Section 26 of the Pennsylvania Constitution, and all other applicable legal requirements; and

f. Grant such other and further relief as the Court deems just and proper.

Dated: December 21, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

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

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PROOF OF SERVICE

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

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