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IN THE SUPREME COURT OF PENNSYLVANIA

PHILIP T. GRESSMAN *et al.*,

Petitioners,

v.

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.

No. 142 MM 2021

**RESPONDENTS' COMBINED ANSWER TO
PETITIONERS' APPLICATION FOR THE EXERCISE OF
EXTRAORDINARY JURISDICTION OR KING'S BENCH POWER AND
PETITIONERS' APPLICATION FOR EXPEDITED REVIEW OF THIS
COURT'S EXERCISE OF EXTRAORDINARY JURISDICTION OR
KING'S BENCH POWER**

Respondents, Veronica Degraffenreid, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania, and Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries, submit this Combined Answer to (1) Petitioners' Application for the Exercise of Extraordinary Jurisdiction or King's Bench Power and (2) Petitioners' Application for Expedited Review of This Court's Exercise of Extraordinary Jurisdiction or King's Bench Power.

I. THIS COURT SHOULD EXERCISE EXTRAORDINARY JURISDICTION OVER THE CONSOLIDATED CASES BELOW

Respondents agree that this Court should exercise extraordinary jurisdiction, pursuant to 42 Pa. C.S. § 726, over the consolidated cases pending in the Commonwealth Court at docket numbers 464 MD 2021 and 465 MD 2021, respectively entitled *Carter v. Degraffenreid* and *Gressman v. Degraffenreid*.¹ Both sets of petitioners seek an injunction prohibiting the use of Pennsylvania's current congressional district map in future elections, as well as the judicial implementation of a new map reflecting the number of congressional representatives currently allocated to Pennsylvania and adhering to other applicable legal requirements.

¹ The Petitioners in 464 MD 2021 and 465 MD 2021 have filed separate applications seeking this Court's exercise of extraordinary jurisdiction. *See* Docket Nos. 141 MM 2021 and 142 MM 2021.

As a result of the 2020 Census, the number of congressional representatives allocated to Pennsylvania has been reduced from 18 to 17. It is therefore clear that Pennsylvania's current congressional map, containing 18 districts, cannot be used in future elections, and that a new map, containing 17 congressional districts, must be adopted before the next congressional election. *See* 2 U.S.C. § 2c (“there shall be established by law a number of districts equal to the number of Representatives to which [each] State is ... entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative”). If a new congressional map is not legislatively enacted in the very near future, it will be necessary and appropriate for the Pennsylvania judiciary to implement one. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992) (implementing a congressional district map when, following the 1990 Census, the Legislature failed to enact a map reflecting the reduced number of congressional seats to which Pennsylvania was entitled); *see also Growe v. Emison*, 507 U.S. 25, 34 (1993) (recognizing “the possibility and legitimacy of state *judicial* redistricting” where the state legislative process fails to produce a lawful map (emphasis in original)).

As this Court has previously recognized, this kind of redistricting litigation presents a particularly compelling case for invoking this Court's plenary jurisdiction. *See Mellow*, 607 A.2d at 206 (Court granted application for exercise of extraordinary jurisdiction). This Court may exercise extraordinary jurisdiction

over “any matter pending before any court ... involving an issue of immediate public importance.” 42 Pa. C.S. § 726. Pennsylvania’s need to adopt a new, lawful congressional district map is indisputably of great public importance, as it implicates the fundamental right of all Pennsylvanians to equal and adequate political representation in the nation’s legislature.

This need is also “immediate” and urgent. *Id.* As Petitioners note, the 2022 primary election, currently scheduled to occur on May 17, 2022, *see* 25 P.S. § 2753(a), is fast approaching. Under the current election schedule, the first day to circulate and file nomination petitions is February 15, 2022. 25 P.S. § 2868. To be eligible to sign a congressional candidate’s nomination petition, an elector must be a resident of the congressional district the candidate seeks to represent. *Id.* Accordingly, a new district map must be in place, so that the boundaries of the new congressional districts are known to candidates, before the circulation of nomination petitions can begin. Further, the Department of State and county boards of elections require some lead time prior to the circulation of nomination petitions—normally about three weeks—to allow them to update the Statewide Uniform Registry of Electors (SURE) system, provide timely notice to candidates, and otherwise implement the new congressional districts.

Given this calendar, the Legislature’s ability to enact a timely new map is in serious doubt. As Petitioners note, a bill must be considered by each full house of

the General Assembly at least three times on three different legislative days before it becomes law. *See* PA. CONST. art. III, § 4. To date, however, no redistricting bill has received more than a first consideration in either chamber. Further, the General Assembly is currently adjourned and will not reconvene until January 4, 2022. And each chamber has scheduled only a very limited number of session days in January.² Finally, legislative leaders have stated that they believe a final map will not be passed until lengthy discussions and negotiations have taken place.³ Under these circumstances, there is a substantial prospect that the legislative process will fail to produce a timely map, and a court-ordered map will be necessary.

If the political branches do not enact a 17-district map in short order, the judiciary will have to act quickly to protect Pennsylvanians' voting rights and minimize disruption to the primary election process. Although the Commonwealth Court immediately consolidated the two redistricting lawsuits and issued an accelerated litigation schedule, even that expedited timetable would not allow this

² *See* Pa. House of Representatives, *House Session Days*, at <https://www.house.state.pa.us/Session.cfm?Chamber=H> (last visited Dec. 26, 2021); Pa. Senate, *Senate Session Days*, at <https://www.pasen.gov/Session.cfm?Chamber=S> (last visited Dec. 26, 2021).

³ *See, e.g.*, Jan Murphy, *Pa. House panel approved preliminary congressional map as 'a starting point' for negotiation*, Pennlive.com, Dec. 16, 2021, <https://www.msn.com/en-us/news/politics/pa-house-panel-approves-preliminary-congressional-map-as-e2-80-98a-starting-point-e2-80-99-for-negotiation/ar-AARRqZX?ocid=uxbndlbing> (last visited Dec. 27, 2021).

Court to begin its review of the case until February. By exercising extraordinary jurisdiction, this Court can eliminate the need for separate courts to issue two successive judgments and reduce the time required to issue a final map.

II. THIS COURT SHOULD SET A DEADLINE FOR SUBMISSIONS REGARDING THE LITIGATION SCHEDULE AND ELECTION CALENDAR

Petitioners in both of the consolidated cases below propose that, after exercising plenary jurisdiction, this Court enter a scheduling order that is even more accelerated than the Commonwealth Court's, whereby this Court would implement a final map by no later than January 24, 2022.⁴ Respondents do not take a position on the appropriate litigation schedule at this time. If the Court elects to exercise extraordinary jurisdiction, Respondents request that the Court set a deadline, coincident with or following the deadline for the filing of applications to intervene, for submissions addressing the schedule that should govern this case, as well as whether any revisions to the 2022 primary election schedule are necessary.

⁴ Petitioners in this case, No. 142 MM 2021, proposed this schedule in an Application for Expedited Review of This Court's Exercise of Extraordinary Jurisdiction or King's Bench Power, which they filed separately from their Application for the Exercise of Extraordinary Jurisdiction or King's Bench Power. Petitioners in case No. 141 MM 2021 proposed the same schedule as part of their Application for Extraordinary Relief Under 42 Pa. C.S. § 726 and Pa. R.A.P. 3309.

Respectfully submitted,

Dated: December 27, 2021

HANGLEY ARONCHICK SEGAL
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By: /s/ Robert A. Wiygul

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CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

Dated: December 27, 2021

/s/ Robert A. Wiygul

Robert A. Wiygul