

IN THE SUPREME COURT OF PENNSYLVANIA

RYAN COVERT, ERIK HULICK,
and DARLENE J. COVERT,

CIVIL DIVISION

Petitioners,

No.

v.

2021 PENNSYLVANIA
LEGISLATIVE
REAPPORTIONMENT
COMMISSION,

CHALLENGE TO 2021
PENNSYLVANIA LEGISLATIVE
REAPPORTIONMENT
COMMISSION FINAL
REAPPORTIONMENT PLAN
FOR THE HOUSE OF
REPRESENTATIVES

Respondent.

Filed on behalf of the Petitioners:
Ryan Covert, Erik Hulick, and
Darlene J. Covert

Counsel of Record for the Petitioners:
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PA ID # 87407

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AND NOW come the Petitioners, Ryan Covert, Erik Hulick, and Darlene J. Covert, by and through their attorneys, Jen GV Gilliland Vanasdale, Esquire, Gary T. Vanasdale, Esquire, Jill D. Sinatra, Esquire, Eric A. Thomas, Esquire and GILLILAND VANASDALE SINATRA LAW OFFICE, LLC, and file the following Challenge to the 2021 Pennsylvania Legislative Reapportionment Commission Final Reapportionment Plan for the House of Representatives released on Friday, February 4, 2022, and aver as follows:

PARTIES

1. The Petitioners are Butler County registered voters Ryan Covert, Erik Hulick, and Darlene J. Covert, (hereinafter “Petitioners”), all residents of Butler County, and voters in state representative districts 8 and/or 11 pending the final outcome of this Challenge to the 2020 U.S. decennial census redistricting.

2. The Respondent is the 2021 Pennsylvania Legislative Reapportionment Commission (“LRC”) responsible for drawing district maps following the 2020 U.S. decennial census.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the Petitioners because they all reside in Butler County, Commonwealth of Pennsylvania.

4. This Court has original jurisdiction to hear this Challenge to the LRC Final Reapportionment Plan for the House of Representatives pursuant to Article II, §17(d) of the Pennsylvania Constitution, “Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within 30 days after the filing thereof.”

FACTUAL BACKGROUND

5. Under the Pennsylvania Constitution, state legislative districts are reviewed every ten (10) years following the U.S. decennial census.

6. State Legislative District(s) “shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.” Pa. Const. art. II, § 16.

7. The LRC was created via the Constitutional Convention of 1967-68 and is codified as Article II, section 17 of the Pennsylvania Constitution.

8. On September 16, 2021, the United States Census Bureau released data from the 2020 census to state redistricting authorities and the public.¹

9. According to the 2020 Census, Pennsylvania has 13,002,700 residents and the Pennsylvania House of Representatives is made up of 203 districts. Thus, the ideal district population is about 64,053 persons per district, pursuant to Pa. Const. Art. II, § 16.

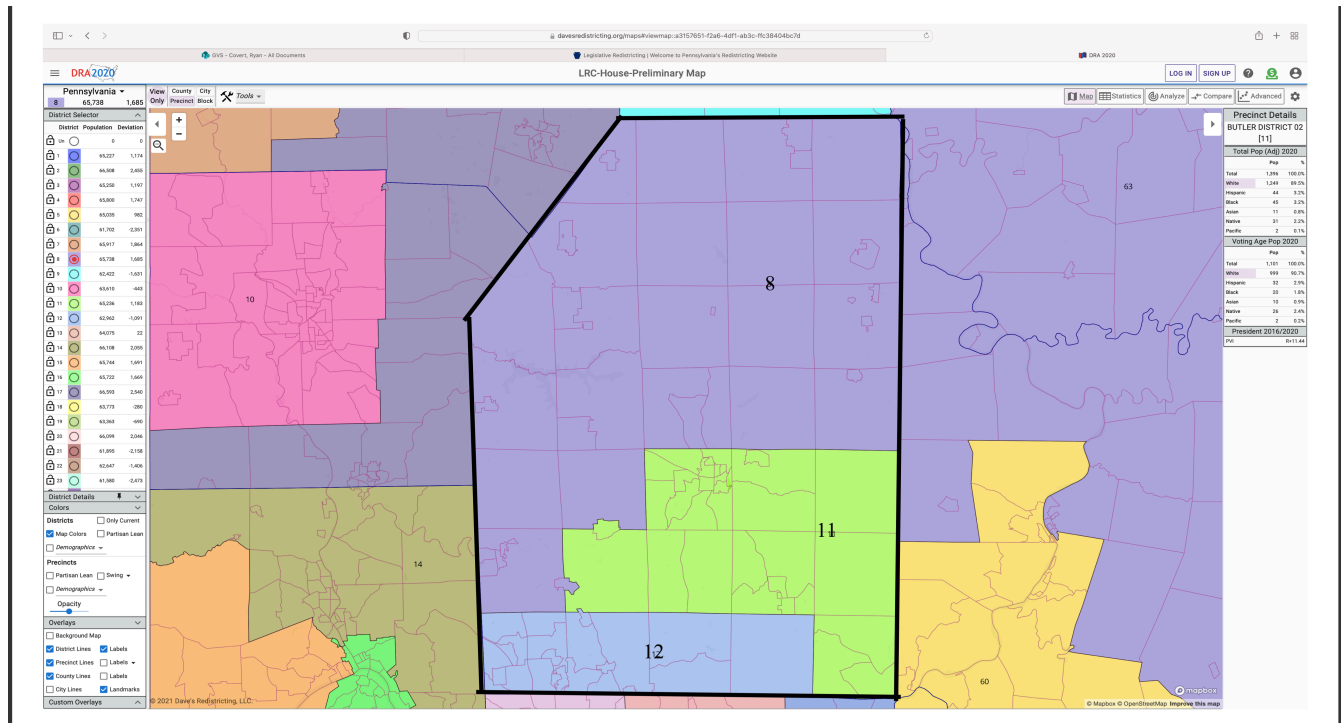
10. The Commonwealth of Pennsylvania reviewed and distributed population data received from the U.S. Secretary of Commerce. This data is commonly referred to as “P.L. 91-171 data,” (hereinafter “data”). Pub. L. No. 940171, 89 Stat. 1023 (1975).

¹ Redistricting in Pennsylvania after the 2020 Census, http://ballotpedia.org/Redistricting_in_Pennsylvania_after_the_2020_census (accessed February 7, 2022).

11. This data showed population growth in Butler County with an increase of 9,901 people, raising Butler County's population from 183,862 people per the 2010 census to 193,763 following the 2020 census.

12. Applying the ideal population of about 64,053 persons per district, Butler County's current population results in Butler County supporting three (3) state representative districts all inside of Butler County.

13. On December 16, 2021, the LRC released its Preliminary Map for Butler County, which did just that and divided Butler County into three (3) state representative districts all in Butler County. *See said Preliminary Map below with Butler County territory description following:*



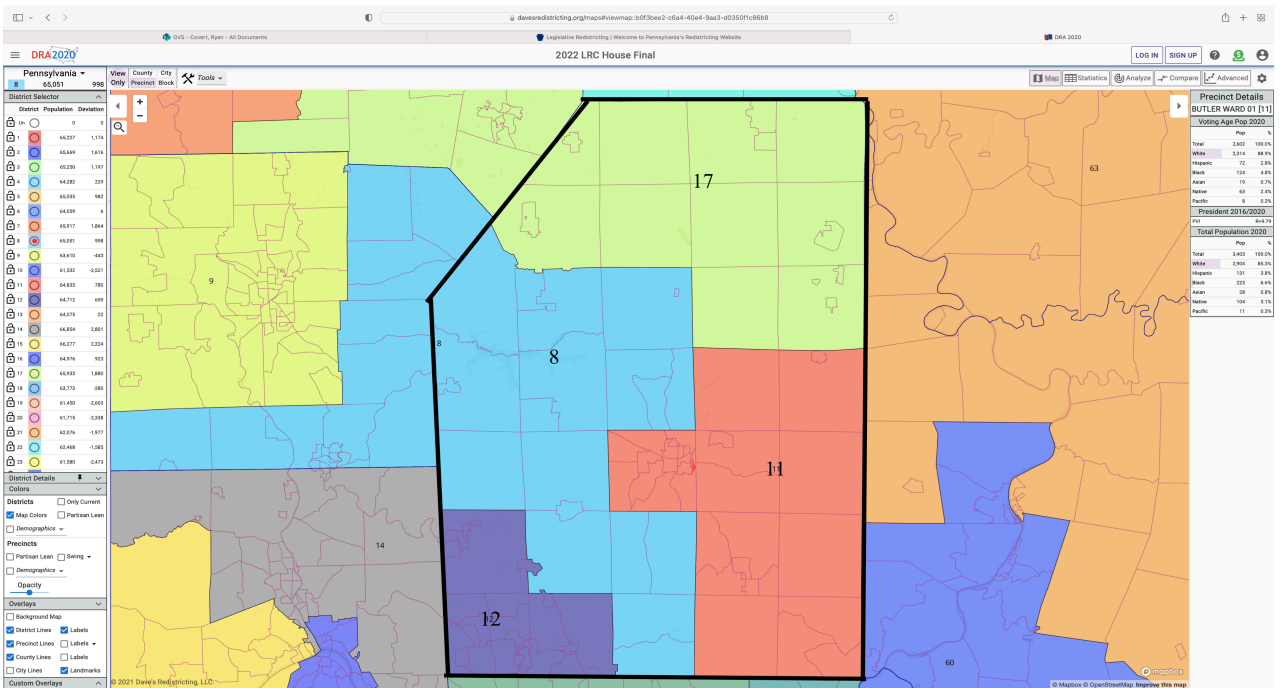
District Number	Description
8	BUTLER County
	Part of BUTLER County consisting of the TOWNSHIPS of Allegheny, Brady, Center, Cherry, Clay, Concord, Connoquenessing, Donegal, Fairview, Franklin, Jackson, Lancaster, Marion, Mercer, Muddy creek, Oakland, Parker, Slippery Rock, Venango, Washington and Worth and the BOROUGHs of Bruin, Cherry Valley, Chicora, Eau Claire, Evans City, Fairview, Harmony, Harrisville, Karns City, Petrolia, Portersville, Prospect, Slippery Rock, West Liberty, West Sunbury and Zelienople.
	Total Population: 65,738
11	BUTLER County
	Part of BUTLER County consisting of the CITY of Butler and the TOWNSHIPS of Buffalo, Butler, Clearfield, Forward, Jefferson, Penn, Summit and Winfield and the BOROUGHs of Connoquenessing, East Butler and Saxonburg.
	Total Population: 65,236
12	BUTLER County
	Part of BUTLER County consisting of the TOWNSHIPS of Adams, Clinton, Cranberry and Middlesex and the BOROUGHs of Callery, Mars, Seven Fields and Valencia.
	Total Population: 62,962

14. The Preliminary Map divided Butler County into three (3) state representative districts that were comprised solely of Butler County residents with populations equal as possible within compact and contiguous territories.

15. As a result, the Petitioners did not voice any concerns to this Preliminary Map as there was no notice that the districts in Butler County would be re-drawn and/or that there would be a violation of the Pennsylvania Constitution in the process.

16. Despite the propriety of the Preliminary Map and lack of objections to same, the LRC on February 4, 2022, effectively pulled a bait and switch when it issued a new and Final Reapportionment Plan (hereinafter “Final Map”), drastically

changing Butler County state house of representative districts without consideration given to dividing Butler County, its cities, incorporated towns, boroughs, townships, wards, municipal boundaries, school districts, or other logical boundaries. *See said Final Map below with Butler County territory description following:*



District Number	Description
8	BUTLER and LAWRENCE Counties
	Part of BUTLER County consisting of the TOWNSHIPS of Brady, Center, Clay, Connoquenessing, Forward, Franklin, Lancaster, Middlesex, Muddycreek, Penn and Worth and the BOROUGHS of Connoquenessing, Portersville, Prospect, West Liberty and West Sunbury and Part of LAWRENCE County consisting of the TOWNSHIPS of Little Beaver, Perry, Plain Grove, Scott, Slippery Rock, Washington and Wayne and the BOROUGHS of Ellport, Ellwood City (Lawrence County Portion), Enon Valley, New Beaver, Volant and Wampum.
	Total Population: 65,051 (-687 from Prelim Plan Map)
11	BUTLER County
	Part of BUTLER County consisting of the CITY of Butler and the TOWNSHIPS of Buffalo, Butler, Clearfield, Clinton, Donegal, Jefferson, Oakland, Summit and Winfield and the BOROUGHS of Chicora, East Butler and Saxonburg.
	Total Population: 64,833 (-403 from Prelim Plan Map)
12	BUTLER County
	Part of BUTLER County consisting of the TOWNSHIPS of Adams, Cranberry and Jackson and the BOROUGHS of Callery, Evans City, Harmony, Mars, Seven Fields, Valencia and Zelienople.
	Total Population: 64,712 (+1750 from Prelim Plan Map)
17	BUTLER and MERCER Counties
	Part of BUTLER County consisting of the TOWNSHIPS of Allegheny, Cherry, Concord, Fairview, Marion, Mercer, Parker, Slippery Rock, Venango and Washington and the BOROUGHS of Bruin, Cherry Valley, Eau Claire, Fairview, Harrisville, Karns City, Petrolia and Slippery Rock and Part of MERCER County consisting of the TOWNSHIPS of Coolspring, Deer Creek, Delaware, East Lackawannock, Fairview, Findley, French Creek, Jackson, Jefferson, Lake, Liberty, Mill Creek, New Vernon, Otter Creek, Perry, Pine, Salem, Sandy Creek, Sandy Lake, Springfield, Sugar Grove, Wilmington, Wolf Creek and Worth and the BOROUGHS of Fredonia, Grove City, Jackson Center, Mercer, New Lebanon, Sandy Lake, Sheakleyville and Stoneboro.
	Total Population: 65,933

17. Under the Final Map, seven (7) out of the eight (8) school districts in Butler County are divided into multiple state representative districts and overlap into school districts in Lawrence and/or Mercer Counties as illustrated below:

Butler County School Districts	District # Per Final Plan
Butler Area	8,11
Freeport Area	11
Karns City Area	8,17
Mars Area	8,12
Moniteau	8,17
Seneca Valley	8,12
Slippery Rock Area	8,17
South Butler County (Knoch)	8,11
School Districts outside of Butler County	District # Per Final Plan
Laurel	8,9
Mohawk Area	8,9
Wilmington Area	8,9,17
Blackhawk*	8,15

* Appears to include portions of Beaver County too

18. To further elaborate, Middlesex Township was separated from district 12, despite being a big part of the Mars Area School District that encompasses district 12. Penn Township was separated from district 11, despite being a big part of the South Butler School District that encompasses district 11.

19. The population of the districts were also shuffled by adding 1,750 people to district 12 so that district 8 could include population outside of Butler County to draw in Lawrence County, where an incumbent State Representative resides.

20. Under the Final Map, the Pittsburgh-Butler County Regional Airport, which is located in Penn Township, Butler County, would now be part of district 8 that goes outside of Butler County into Lawrence County, where this incumbent State Representative resides. The Butler County airport is critical to Butler County development and business and has little to nothing to do with Lawrence County.

21. Growing areas in Middlesex Township, Butler County district 12 that border Allegheny County were moved in the Final Map to become part of district 8, which is more rural, extends into Lawrence County, and traverses all the way to the Ohio state line.

22. Under the Final Map, district 17 includes a portion of Butler County (22,294 people), with the majority of the population residing in Mercer County (43,639 people), where another incumbent State Representative resides.

23. The clear result of the Final Map is that Butler County residents are victims of excessive partisan or political classifications and other circumstances orchestrated to protect incumbent State Representatives.

24. There is no legal basis to assign the residents of Butler County to state house of representative districts outside of Butler County that include Lawrence and Mercer Counties, splitting Butler County, cities, incorporated towns, boroughs, townships, wards, municipal boundaries, and school districts between different State Representatives.

25. The Final Map is an unconstitutional political gerrymander, is improper, and must be stricken.

26. This Honorable Court held in League of Women’s Voters of Pa. v. Commonwealth, 178 A.3d 809 (Pa. 2018), “[i]t is a core principle of our republican form of government that the voters should choose their representatives, not the other way around.”²

**ARGUMENT TO STRIKE AND SET ASIDE FINAL MAP
AND ADOPT PRELIMINARY MAP FOR BUTLER COUNTY**

**I. VIOLATION OF THE PENNSYLVANIA CONSTITUTION
ARTICLE I SECTION 5**

27. The averments in paragraphs 1-26 of this Challenge are incorporated by reference as if set forth at length herein.

28. Under the Pennsylvania Constitution, “Elections 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.

29. The Pennsylvania Constitution sets up requirements for districts and these requirements include that district(s) be “as nearly equal in population as practicable.” Pa. Const. art. II, § 16. To ensure equal protection and access, the districts must be set up to “make [each vote] equally potent in the election; so that

² Mitchell N. Berman, *Managing Gerrymandering*, 83 Tex. L. Rev. 781, 781 (2205), quoted in *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2677 (2015).

some shall not have more votes than others, and that all shall have an equal share.”

League of Women’s Voters of Pa. v. Commonwealth, 178 A.3d 809 (Pa. 2018).

30. The Supreme Court found that there are three requirements that all districts must meet: (1) the population of such districts must be equal, to the extent possible; (2) that district that is created must be comprised of compact and contiguous geographical territory; and (3) the district respects the boundaries of existing political subdivisions contained therein such that the district divides as few of those subdivisions as possible. Id. At 815. (citing Pa. Const., art. II, § 16).

31. The newly created Final Map pieces together portions of multiple school districts spreading the districts out over state representative districts 8, 11, 12, and 17.

32. The Final Map interferes with the free exercise of the right of suffrage as it does not equally and fairly apply voting power across districts, thus eliminating the free and equal requirement for elections under the Pennsylvania Constitution and beyond.

33. Moreover, it takes the opportunity away from the people to select their representative of their choice, which violates the Free and Equal Elections Clause enumerated in the Pennsylvania Constitution.

34. The neutral and constitutional criteria of compactness, contiguity, and minimization of the division of political subdivisions was subordinate in the Final

Map to other factors involving unfair partisan advantage and protecting incumbents over the constitutional protections of the residents of Butler County.

35. Furthermore, there is no legally valid reason to place residents of Butler County into state representative districts that include parts of Lawrence and/or Mercer Counties other than for politically motivated gerrymandering.

36. As such, the Final Map violates Article I, Section 5 of the Pennsylvania Constitution.

II. VIOLATION OF THE PENNSYLVANIA CONSTITUTION **ARTICLE II SECTION 16**

37. The averments in paragraphs 1-36 are hereby incorporated by reference as if set forth at length herein.

38. Pa. Const. art. II, §16 requires that:

The Commonwealth shall be divided into 50 senatorial and 203 representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

39. The Preliminary Map achieved this Constitutional requirement. Without notice and failing to provide an opportunity to be heard, the LRC changed this Preliminary Map on Friday, February 4, 2022, and divided Butler County from three

(3) state representative districts all inside of Butler County to four (4) districts that include Butler, Mercer and/or Lawrence Counties.

40. This is illegal political gerrymandering at the expense of the Butler County residents and must be stricken as unconstitutional as a direct violation of Article II Section 16, of the Pennsylvania Constitution.

III. VIOLATION OF THE PENNSYLVANIA CONSTITUTION **ARTICLE I SECTION 26**

41. Paragraphs 1 – 40 are incorporated by reference as if fully set forth at length herein.

42. Pa. Const., art. I, § 26 provides that “neither 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.”

43. The current adoption by the LRC of the Final Map deprives the voters of Butler County of meaningful input into state representative elections because of dilution of their vote across counties and other governing boundaries.

44. Furthermore, it deprives the voters of proper representation by forcing many to travel outside of Butler County and their local communities to see their state representative.

45. The effect of the current realignment is to deny the voters of Butler County of the enjoyment of the right to vote and rights to proper representation by

depriving the voter of meaningful power based on political manipulation of district voting.

IV. ABUSE OF OFFICE, MISAPPLICATION OF GOVERNMENT RESOURCES, COLLUSION, CIVIL CONSPIRACY AND NEGLIGENCE

46. Paragraphs 1 – 45 are incorporated by reference as if fully set forth at length herein.

47. Respondents' actions constitute a violation of Pennsylvania law as the Final Map conflicts with the Pennsylvania Constitution and is improperly designed for political reasons at the expense of the residents of Butler County.

48. A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity abuses office when knowing conduct is illegal, he or she denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity. 53 Pa.C.S.A. § 5301

49. The Petitioners' right to vote have been violated by the actions of the LRC and others in the process.

50. Moreover, entrusted government resources have been used in a manner to the benefit of certain government officials to the detriment of the Petitioners.

51. The differences between the Preliminary Map and the Final Map raises concerns that there were backroom deals and/or changes made behind closed doors,

suggesting possible conspiracy, collusion and/or neglect of proper duties by interested persons associated with the LRC and/or our state government officials.

52. The Pennsylvania Constitution makes clear that a reapportionment plan can never have force of law until all appeals are decided, and even then, only if all challenges are dismissed.” See Pa. Const. art II, § 17(e). Holt et al v. 2011 Legislative Reapportionment Comm’n, 614 Pa. 364, 373 (2012).

53. In addition, the court in Holt articulated the impact on delayed reviews of the census data when it recognized that the LRC “failed to adopt a plan in a timeframe that offered the remote prospect of appellate review before the primary season began...[and] the inexplicable delay ensured that primary candidates who relied upon the 2011 Final Plan did so at their own peril.” Id. at 373.

54. The same delay and circumstances are happening here, as census data was released on September 16, 2021, but the Final Map was not released until February 4, 2022, just eleven (11) days before the start of petition circulating and without accounting for the thirty (30) day period to file a challenge.

55. As a result of this lack of transparency and due process, there is not enough time to adjudicate this challenge before the start of petition circulating on Tuesday, February 15, 2022.³

³ This date has been temporarily suspended pursuant to this Honorable Court’s Order of February 9, 2022, at Docket No. 7 MM 2022.

56. Due to the uncertainty of the outcome of state representative districts, candidates, such as Petitioner Ryan Covert, are not able to proceed as planned and the entire integrity of a free and equal opportunity election is compromised and therefore Petitioners immediately seek a new Elections Calendar to be set along with appropriate relief.

57. Petitioners reserve the right to amend and/or supplement this Challenge within the thirty (30) day challenge period.

PRAYER FOR RELIEF

Petitioners respectfully request that this Honorable Supreme Court:

1. Immediately adopt a new Elections Calendar which accommodates the Supreme Court of Pennsylvania's need to adjudicate this challenge to the 2021 LRC Final Map;
2. Enter an Order striking and setting aside the 2021 LRC Final Map and adopting the Preliminary Map as to Butler County State Representative Districts;
3. Award Petitioners their costs, disbursements, and reasonable attorneys' fees related to this action; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,
GILLILAND VANASDALE SINATRA
LAW OFFICE, LLC

By: /s/ Jen GV Gilliland Vanasdale, Esquire
Gary T. Vanasdale, Esquire
Jill D. Sinatra, Esquire
Eric A. Thomas, Esquire
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing **Challenge to 2021 Pennsylvania Legislative Reapportionment Commission Final Reapportionment Plan for the House of Representatives** to be served upon the following party and in the manner indicated below, which service satisfies the requirements of Pa. R.C.P. 121:

By Certified Mail:

Mark A. Nordenberg
Chairman of the 2021 Legislative Reapportionment Commission
Pennsylvania Department of State
Office of the Secretary
302 North Office Building, 401 North Street
Harrisburg, PA 17120

By Certified Mail:

John Vaskov, Esquire
Deputy Prothonotary
801 City-County Building
414 Grant Street
Pittsburgh, PA 15219

By Certified Mail and PACFile:

Office of Attorney General
Strawberry Square, 16th Floor
Harrisburg, PA 17120

/s/ Jen GV Gilliland Vanasdale, Esquire

Dated: February 15, 2022

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provision 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.

Submitted by:

Petitioners

By Counsel:

/s/ Jen GV Gilliland Vanasdale, Esquire

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Gary T. Vanasdale, Esquire

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