IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Louis Agre, William Ewing, Floyd Montgomery, Joy Montgomery, and Rayman Solomon,

Plaintiffs,

and

Barbara Diamond, Steven Diamond, Nancy Chiswick, William Cole, Ronald Fairman, Colleen Guiney, Gillian Kratzer, Deborah Noel, Margaret Swoboda, Susan Wood, and Pamela Zidik,

Proposed Plaintiff-Intervenors

v.

Thomas W. Wolf, Governor of Pennsylvania, Robert Torres, Acting Secretary of State of Pennsylvania, and Jonathan Marks, Commissioner of the Bureau of Elections, in their official capacities,

Defendants,

and

Michael C. Turzai, Speaker of the Pennsylvania House of Representatives, and Joseph Scarnati III, Pennsylvania Senate President Pro Tempore, in their official capacities,

Defendant-Intervenors

Civil Action No. 2:17-cv-4392

MOTION TO INTERVENE AS PLAINTIFFS

Barbara Diamond, Steven Diamond, Nancy Chiswick, William Cole, Ronald Fairman, Colleen Guiney, Gillian Kratzer, Deborah Noel, Margaret Swoboda, Susan Wood, and Pamela Zidik, (the "Diamond Plaintiffs") seek to participate as intervening plaintiffs in the above-

captioned lawsuit challenging the constitutionality of Pennsylvania's 2011 Congressional districting plan as an impermissible partisan gerrymander.

For the reasons discussed in the memorandum in support, filed concurrently herewith as Exhibit A, the Diamond Plaintiffs are entitled to intervene in this case as a matter of right under Federal Rule of Civil Procedure 24(a)(2). In the alternative, the Diamond Plaintiffs request permissive intervention pursuant to Rule 24(b). In accordance with Rule 24(c), a proposed complaint in intervention is attached as Exhibit B.

Counsel for the Diamond Plaintiffs have conferred with counsel for the Agre Plaintiffs, the Defendants, and the Defendant-Intervenors. The Agre Plaintiffs and the Defendant-Intervenors have indicated that they do not consent to intervention, and the Defendants have indicated that they are still considering their position.

WHEREFORE, the Diamond Plaintiffs pray that the Court grant them leave to intervene in the above-captioned matter and to file the proposed complaint in intervention that is attached as Exhibit B.

Dated: November 3, 2017

By: *s/ Adam C. Bonin*

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CERTIFICATE OF SERVICE

I certify that on November 3, 2017, I filed the foregoing with the Clerk of the Court using the ECF System which will send notification of such filing to the registered participants as identified on the Notice of Electronic Filing.

Date: November 3, 2017

s/ Adam C. Bonin
Adam C. Bonin

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AS PLAINTIFFS

Barbara Diamond, Steven Diamond, Nancy Chiswick, William Cole, Ronald Fairman, Colleen Guiney, Gillian Kratzer, Deborah Noel, Margaret Swoboda, Susan Wood, and Pamela

Zidik (the "Diamond Plaintiffs") seek to participate as intervening plaintiffs in the above-captioned lawsuit challenging the constitutionality of Pennsylvania's 2011 Congressional districting plan ("the 2011 Plan") as an impermissible partisan gerrymander. The Diamond Plaintiffs are entitled to intervene in this case as a matter of right under Federal Rule of Civil Procedure 24(a)(2). In the alternative, the Diamond Plaintiffs request permissive intervention pursuant to Rule 24(b). In accordance with Rule 24(c), a proposed complaint in intervention is attached as Exhibit B.

Counsel for the Diamond Plaintiffs have conferred with counsel for the Agre Plaintiffs, the Defendants, and the Defendant-Intervenors. The Agre Plaintiffs and the Defendant-Intervenors have indicated that they do not consent to intervention, and the Defendants have indicated that they are still considering their position.

A. BACKGROUND

The Diamond Plaintiffs, all Democratic-affiliated voters residing in and registered to vote in Pennsylvania's Congressional Districts 1, 3, 4, 5, 7, 9 and 11, seek to intervene in this action to protect their voting rights, freedom of speech and association, and other interests that are guaranteed by the First and Fourteenth Amendments and Article I, Section IV of the United States Constitution. In this litigation, several voters have challenged the constitutionality of the Commonwealth's 2011 Plan, which was enacted by the majority-Republican Pennsylvania General Assembly and Republican Governor Tom Corbett. The 2011 Plan is one of the most extreme partisan gerrymanders in the nation.

Like the Agre plaintiffs, the Diamond Plaintiffs assert that the 2011 Plan violates Article I, Section IV of the U.S. Constitution, better known as the Elections Clause, which only allows legislatures to adopt procedural rules for the conduct of Congressional elections, and does not include the power to dictate or control the electoral outcomes of those elections in favor of a

specific class of candidates. Unlike the Agre Plaintiffs, however, the Diamond Plaintiffs also allege that the 2011 Plan directly violates the First and Fourteenth Amendments to the U.S. Constitution.[1] In addition, as voters who are registered with the Democratic Party and who have supported Democratic congressional candidates in the past and plan to support Democratic candidates in the future, the Diamond Plaintiffs are particularly impacted by the 2011 Plan as it directly dilutes and diminishes their voting power. And, given that Defendant-Intervenors are the leaders of the opposing political party, it is particularly important that Democratic-affiliated voters have the opportunity to protect their interests.

The Complaint in this matter was filed on October 2, 2017. Defendants answered on October 23, and Defendant-Intervenors' motion to intervene was granted on October 25. The next hearing is scheduled for November 7.

B. ARGUMENT

The resolution of this litigation will have a direct impact on the Diamond Plaintiffs' ability to exercise their First and Fourteenth Amendment rights, and their right to participate in elections unburdened by districting plans that are beyond the state legislature's authority to adopt. Given that imperative interest, which is not adequately protected by any of the current plaintiffs, and the fact that the litigation is still at an early stage, the Diamond Plaintiffs' motion to intervene should be granted. As set forth below, the Diamond Plaintiffs meet the requirements for intervention as a matter of right under Federal Rule of Civil Procedure 24(a)(2). But even if that Rule did not apply, this Court could and should allow the Diamond Plaintiffs to intervene under Rule 24(b), which allows for permissive intervention at the Court's discretion.

[1] By contrast, the Agre Plaintiffs appear to assert that the 2011 Plan violates the Agre Plaintiffs' First and Fourteenth Amendment Rights because the plan is beyond the legislature's authority to enact under the Elections Clause. *See* discussion *infra* part B.1.d.

1. THE DIAMOND PLAINTIFFS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT UNDER RULE 24(A)(2)

The Diamond Plaintiffs easily meet the test applied in the Third Circuit to motions to intervene as of right. Specifically, (1) the motion is timely; (2) the Diamond Plaintiffs possess an interest in the subject matter of the action; (3) denial of their motion would impair or impede their ability to protect their interest; and (4) their interest is not adequately represented by the existing parties to the litigation. Fed. R. Civ. P. 24(a)(2); *Harris v. Pernsley*, 820 F.2d 592, 596 (3d Cir. 1987).

a. The Motion to Intervene is Timely

The Diamond Plaintiffs seek to intervene in this action at an early stage. No substantive motion has been fully briefed, no substantive action has yet been taken on the merits of Plaintiffs' claims, and the Court has held only a single status conference. Accordingly, no party can legitimately claim that intervention by the Diamond Plaintiffs at this early stage would cause them any prejudicial delay. Nor have the Diamond Plaintiffs delayed in moving for intervention. Indeed, the action itself was filed only a month ago, and the Defendant-Intervenors' motion to intervene was granted late last week. Moreover, the Diamond Plaintiffs are able to proceed without adversely impacting the current scheduling order.

Under these circumstances, the Court should find the motion timely.

b. The Diamond Plaintiffs Possess A Significantly Protectable Interest in the Substance of This Litigation

This litigation concerns the constitutionality of the 2011 Plan which, if not enjoined, will continue to directly and significantly burden the Diamond Plaintiffs' ability to influence electoral outcomes in Pennsylvania and legislative outcomes in the U.S. Congress. *See, e.g.*, *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995) (describing a "significantly protectable" interest as a "legal interest" that is "recognized as one

belonging to or being owned by the proposed intervenor"); *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991) (holding that where the intervenor stands "to gain or lose by the direct legal operation of the district court's judgment," the intervenor's interest in the subject matter of the litigation is significantly protectable to support intervention as of right); 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Fed. Prac. & Proc.: Civ. § 1908.1 (3d ed. 2007) ("[I]n cases challenging various statutory schemes as unconstitutional . . . , the courts have recognized that the interests of those who are governed by those schemes are sufficient to support intervention."). Indeed, individual voters have regularly intervened as a matter of right in cases challenging the apportionment of districts, *see, e.g.*, *Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003); *Johnson v. Mortham*, 915 F. Supp. 1529, 1536 (N.D. Fla. 1995), including in cases where the original plaintiffs were also affected voters in the jurisdiction. *See, e.g.*, *Graham v. Thornburgh*, 207 F. Supp. 2d 1280, 1282 (D. Kan. 2002); *Fletcher v. Golder*, No. 91-2314C(7), 1992 WL 105910, at *1 (E.D. Mo. Feb. 24, 1992), *aff'd*, 959 F.2d 106 (8th Cir. 1992).

c. Denial of This Motion Would Impair the Diamond Plaintiffs' Ability to Protect Their Interests

The Diamond Plaintiffs also meet the third factor for intervention as of right, which requires that an intervenor be "so situated that disposing of the action may as a practical matter impair or impede [its] ability to protect its interest." Fed. R. Civ. P. 24(a)(2). Generally, when considering this factor, courts "look[] to the 'practical consequences' of denying intervention," recognizing that even if the party seeking to intervene may vindicate its interests in some later litigation, that is not a sufficient basis to deny intervention under Rule 24(a)(2). *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977); *see also Mountain Top Condo*, 72 F.3d at 368 ("proposed intervenors must also demonstrate that their interest *might* become affected or impaired, as a practical matter, by the disposition of the action in their absence");

Brody By & Through Sugzdinis v. Spang, 957 F.2d 1108, 1123 (3d Cir. 1992) ("this factor may be satisfied if, for example, a determination of the action in the applicants' absence will have a significant stare decisis effect on their claims, or if the applicants' rights may be affected by a proposed remedy" even though "[a]n applicant need not, however, prove that he or she would be barred from bringing a later action or that intervention constitutes the only possible avenue of relief"); *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1185 n. 15 (3d Cir. 1994) (similar).

The practical consequence of a judgment upholding the 2011 Plan would mean the continued impairment of the Diamond Plaintiffs' First and Fourteenth Amendment rights. Even if the Diamond Plaintiffs could bring a separate action challenging the law on First and Fourteenth Amendment grounds, requiring them to do so would be contrary to the rule that courts are to construe intervention liberally so as to "'involv[e] as many apparently concerned persons as is compatible with efficiency and due process.'" *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). Furthermore, the disposition of the Agre Plaintiffs' claims in this litigation could impair the Diamond Plaintiffs' ability to prosecute their own separate claim, if the decision is treated as stare decisis. The Diamond Plaintiffs, like the Agre Plaintiffs, assert a claim under the Elections Clause. In addition, although the Agre Plaintiffs' second and third causes of action do not assert claims under the First and Fourteenth Amendments, those claims will likely require the Court to interpret the First and Fourteenth Amendments as applied to partisan gerrymandering. *Cf. id*. at 730 (finding practical impairment of intervenors' interest apparent where the stare decisis effect of the litigation would impact intervenors' future activities)*; see also Nuesse*, 385 F.2d at 702. Thus, the letter and spirit of the Rule is best promoted by granting the Diamond Plaintiffs'

motion for intervention, so that their challenge may be considered and efficiently resolved together with the challenges of the Agre plaintiffs.

d. The Diamond Plaintiffs' Interests are Not Adequately Represented by the Agre Plaintiffs

To satisfy the final requirement of intervention as of right, the Diamond Plaintiffs need only show that representation of their interest by the current parties "may be" inadequate; the burden of making this showing is "minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Any doubt regarding the adequacy of representation should be resolved in favor of the would-be intervenors. *ACR Energy Partners, LLC v. Polo N. Country Club, Inc.*, 309 F.R.D. 191, 192 (D.N.J. 2015) (noting courts "liberally construe[] Rule 24(a) in favor of intervention") (citation omitted) (quotation marks omitted); *see also* 6 James Wm. Moore et al., Moore's Fed. Prac. § 24.03[4][a][i] (3d ed. 2011)..

The Diamond Plaintiffs' interests are not adequately represented by the current parties to this litigation. First, the Diamond Plaintiffs' interests are clearly adverse to the Defendants and the Defendant-Intervenors, who either authored the 2011 Plan, or are charged with enforcing the very provisions that will continue infringe upon the Diamond Plaintiffs' First and Fourteenth Amendment rights. And, while the proposed complaint in intervention raises common issues of law and fact to those raised in the original complaint, the Diamond Plaintiffs assert two additional claims—that the 2011 Plan directly violates the First and Fourteenth Amendments to the U.S. Constitution. The Agre Plaintiffs appear to assert that the 2011 Plan violates Plaintiffs' equal protection rights and free speech rights, but that such violations are unlawful only because they are beyond the legislature's authority under the Elections Clause. *See, e.g.*, Compl., ECF No. 1, at 11 ¶¶ 44-46, 13 ¶¶ 51-52. By contrast, the Diamond Plaintiffs, while also asserting that the 2011 Plan is unconstitutional under the Elections Clause, separately assert that a redistricting

plan that violates Plaintiffs' First and Fourteenth Amendment rights is unlawful regardless of whether the legislature had the authority to adopt a particular redistricting plan under the Elections Clause, and have pled their claims accordingly. The Diamond Plaintiffs' approach is supported by Justice Kennedy's concurrence in *Vieth v. Jubelirer*, 541 U.S. 267, 313-14 (2004). This approach is also consistent with claims brought in prior and pending partisan gerrymandering claims, including *Common Cause v. Rucho*/*League of Women Voters v. Rucho*, two consolidated actions that challenge North Carolina's congressional districting plan, and which were tried before a three judge court late last month. *See, e.g.*, *Whitford v. Gill*, 218 F. Supp. 3d 837, 855 (W.D. Wis. 2016) (describing plaintiffs' claims); *Shapiro v. McManus*, 203 F. Supp. 3d 579, 589 (D. Md. 2016) (same); *Common Cause v. Rucho*, 240 F. Supp. 3d 376, 379 (M.D.N.C. 2017) (same); *Ga. State Conference of NAACP v. State*, No. 1:17-CV-1427-TCB-WSD-BBM, 2017 WL 3698494, at *10 (N.D. Ga. Aug. 25, 2017) (same).

Because of these differences, the Diamond Plaintiffs' interests are unlikely to be adequately represented unless their motion to intervene is granted. *See, e.g.*, *Foster v. Gueory*, 655 F.2d 1319, 1325 (D.C. Cir. 1981) (granting intervention as a matter of right where intervenors made additional claims about racial discrimination suffered by both the original plaintiffs and the intervenors); *Smith v. Cobb Cty. Bd. of Elections & Registrations*, 314 F.Supp. 2d, 1274 1311 (N.D. Ga. 2002) (granting motion to intervene in voting rights case by intervenors who objected to proposed apportionment plan on grounds other than those raised by original plaintiffs to the litigation); *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 974 (3d Cir. 1998) (granting a motion to intervene as of right as private parties' interests diverged from the government's interest in representation, and where "[t]he early presence of intervenors may serve to prevent errors from creeping into the proceedings, clarify some issues, and perhaps

contribute to an amicable settlement"); *Pereira v. Foot Locker, Inc.*, CIV. A. No. 07-CV-2157, 2009 WL 1214240, at *5 (E.D. Pa. Apr. 27, 2009) (finding inadequate representation where proposed intervenors brought different state law claims in addition to shared federal claims, as there are "substantive differences in possible relief" and intervenors "have a distinct goal that could be fractured by a disposition in this case"); *Ohio River Valley Envtl. Coal., Inc. v. Salazar*, No. 3:09-0149, 2009 WL 1734420, at *1 (S.D.W.Va. June 18, 2009) (granting motion to intervene as of right where defendant and proposed intervenor had identical goals but the "difference in degree of interest could motivate the [intervenor] to mount a more vigorous defense" and "[t]he possibility that this difference . . . could unearth a meritorious argument overlooked by the current Defendant justifies the potential burden on having an additional party in litigation").

Moreover, as registered Democratic voters who have supported Democratic congressional candidates in the past and plan to support Democratic candidates in the future, 2011 Plan directly dilutes and diminishes the Diamond Plaintiffs' voting power. And, given that Defendant-Intervenors are the leaders of the opposing political party, it is important that Democratic voters have the opportunity to directly protect their interests.

2. IN THE ALTERNATIVE, THE DIAMOND PLAINTIFFS REQUEST THAT THE COURT GRANT THEM PERMISSION TO INTERVENE UNDER RULE 24(B)

If the Court does not grant the Diamond Plaintiffs' motion to intervene as a matter of right, they respectfully request that the Court exercise its discretion to allow them to intervene under Rule 24(b). The Court has broad discretion to grant a motion for permissive intervention when the Court determines that (1) the intervenor's claim or defense and the main action have a question of law or fact in common, and that (2) the intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *See* Fed. R. Civ. P. 24(b)(1)(B); *Brody*,

957 F.2d at 1115. Courts have typically permitted voters to intervene in redistricting cases. *See, e.g.*, *League of Women Voters of Haverford Twp. v. Bd. of Comm'rs. of Haverford Twp.*, CIV. A. No. 86-0546, 1986 WL 3868 (E.D. Pa. Mar. 27, 1986) (granting motion for permissive intervention where it "further[ed plaintiffs'] interest in seeing an effective redistricting plan"); *Graham*, 207 F. Supp. 2d at 1282; *Pac for Middle Am. v. State Bd. of Elections*, No. 95 C 827, 1995 WL 571893 (N.D. Ill. Sept. 22, 1995); *Bossier Par. Sch. Bd. v. Reno*, 157 F.R.D. 133 (D.D.C. 1994).

The Diamond Plaintiffs easily meet the requirements for permissive intervention. First, the Diamond Plaintiffs' proposed complaint has questions of law and fact in common with the original complaint: both challenge the constitutionality of the 2011 Plan, and both raise claims under the Elections Clause, as well as claims that will likely require the Court to construe the First and Fourteenth Amendments as applied to partisan gerrymandering. Second, for the reasons set forth above, the motion is timely and, given the early stage of this litigation, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Indeed, the Diamond Plaintiffs are able to proceed without adversely impacting the current scheduling order.

Finally, the Diamond Plaintiffs' intervention will serve to contribute to the full development of the factual and legal issues before the Court. For example, the Diamond Plaintiffs have engaged Dr. Jonathan Rodden, a Professor in the Department of Political Science at Stanford University, who is a nationally recognized expert in the quantitative analysis of political geography and representation, and who has published extensively on the measurement and analysis of partisan gerrymandering using cutting-edge computational social science methodologies. *See Veith*, 541 U.S. at 312–13 (Kennedy, J., concurring) ("[N]ew technologies may produce new methods of analysis that make more evident the precise nature of the burdens

gerrymanders impose on the representational rights of voters and parties. That would facilitate court efforts to identify and remedy the burdens[.]"). Courts have regularly permitted intervention where intervenors would contribute to the court's understanding of the facts through witness testimony. *See, e.g.*, *Students for Fair Admissions Inc. v. Univ. of N.C.*, 319 F.R.D. 490, 496 (M.D.N.C. 2017) (permitting intervention where intervenors' evidence consisted mostly of "declarations and expert testimony" and intervention was in the early stages of the suit); *Ass'n of Conn. Lobbyists LLC v. Garfield*, 241 F.R.D. 100, 103 (D. Conn. 2007) (permitting intervention where "[t]he movants will also significantly contribute to full development of the underlying factual issues and to the just and equitable adjudication of the legal questions presented."); *Boardman v. Inslee*, No. C17-5255 BHS, 2017 WL 1957131, at *3 (W.D. Wash. May 11, 2017) (permitting intervention and finding it "will allow for a more fully developed record," including participation in discovery). Accordingly, the Diamond Plaintiffs' intervention will contribute to the full and just adjudication of the legal questions presented.

C. CONCLUSION

For the reasons stated above, the Diamond Plaintiffs respectfully request that the Court grant their motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit them to intervene under Rule 24(b). If granted permission to intervene under either provision, the Diamond Plaintiffs have attached a proposed complaint in intervention for filing accordance with the Federal and Local Rules of Civil Procedure.

Dated: November 3, 2017

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Defendant-Intervenors.

Civil Action No. 2:17-cv-4392

COMPLAINT IN INTERVENTION

1. Plaintiff-Intervenors bring this action to challenge the constitutionality of Pennsylvania's 2011 Congressional district plan as a partisan gerrymander in violation of the First and Fourteenth Amendments and the Elections Clause of the United States Constitution.

2. During the 2010-2011 Congressional redistricting cycle, Pennsylvania's majority-Republican General Assembly and Republican Governor adopted a Congressional district plan ("the 2011 Plan"), which purposefully maximized the power and influence of the Republican Party and Republican-affiliated voters and minimized the power and influence of the Democratic Party and Democratic-affiliated voters, without regard to the degree of popular support enjoyed by candidates of each party. As a result, some Democratic-affiliated voters were illegally packed into certain districts to dilute their voting power, while other Democratic-affiliated voters were cracked and spread among the remaining districts to deny them a realistic opportunity to elect candidates of their choice, resulting in one of the most extreme partisan gerrymanders in the nation by virtually any measure.

3. Indeed, under the 2011 Plan, Republican Congressional candidates have been elected to Congress in 2012, 2014, and 2016 at rates wildly asymmetric to the share of the actual votes that they earned statewide. For example, in 2012, 2014, and 2016, Republican Congressional candidates won 72% (13 of 18) of Pennsylvania's Congressional seats, despite earning less than or a bare majority of Congressional votes statewide (approximately 49%, 55%, and 54%, respectively).

4. And the objective characteristics of several of the Congressional districts—bizarrely shaped and highly non-compact—demonstrate that traditional redistricting principles were plainly subjugated to the 2011 Plan's partisan purpose.

5. Drawn with the aim of maximizing Republican power, the 2011 Plan burdens voters' freedom of speech and association based upon their political beliefs as expressed through their membership in and support for candidates of the Democratic Party. Moreover, it constitutes an exercise of power by the General Assembly that goes well-beyond its

constitutionally permitted regulation of the time, place and manner of elections. As such, the 2011 Plan cannot pass constitutional muster.

6. Accordingly, Plaintiff-Intervenors seek a declaration that the 2011 Plan is invalid and an injunction prohibiting Defendants from calling, holding, administering, or taking any action with respect to the 2018 Congressional elections and future primary and general elections under the 2011 plan.

PARTIES

7. Plaintiff-Intervenor Barbara Diamond is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. She is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. She currently resides in Congressional District 15.

8. Plaintiff-Intervenor Steven Diamond is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. He is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. He currently resides in Congressional District 15.

9. Plaintiff-Intervenor Nancy Chiswick is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. She is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. She currently resides in Congressional District 5.

10. Plaintiff-Intervenor William Cole is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. He is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. He currently resides in Congressional District 3.

11. Plaintiff-Intervenor Ronald Fairman is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. He is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. He currently resides in Congressional District 9.

12. Plaintiff-Intervenor Colleen Guiney is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. She is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. She currently resides in Congressional District 1.

13. Plaintiff-Intervenor Gillian Kratzer is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. She is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. She currently resides in Congressional District 9.

14. Plaintiff-Intervenor Deborah Noel is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. She is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. She currently resides in Congressional District 7.

15. Plaintiff-Intervenor Margaret Swoboda is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. She is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. She currently resides in Congressional District 5.

16. Plaintiff-Intervenor Susan Wood is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. She is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. She currently resides in Congressional District 6.

17. Plaintiff-Intervenor Pamela Zidik is a United States citizen and a registered voter in the Commonwealth of Pennsylvania. She is a registered Democrat, has supported Democratic candidates for Pennsylvania's Congressional delegation in the past, and plans to support Democratic candidates in the future. She currently resides in Congressional District 11.

18. Defendant Thomas W. Wolf is the Governor of the Commonwealth of Pennsylvania and is sued in his official capacity. Governor Wolf is responsible for the faithful execution of enacted laws, including the 2011 Plan.

19. Defendant Robert Torres is the Acting Secretary of the Commonwealth of Pennsylvania and is sued in his official capacity. Acting Secretary Torres is responsible for the general supervision and administration of Pennsylvania's elections and election laws, including those elections administered for the districts created by the 2011 Plan.

20. Defendant Jonathan Marks is the Commissioner of the Bureau of Elections in Pennsylvania and is sued in his official capacity. Commissioner Marks is responsible for the general supervision and administration of Pennsylvania's elections and election laws, including those elections administered for the districts created by the 2011 Plan.

JURISDICTION AND VENUE

21. This Court has jurisdiction to hear Plaintiff-Intervenors' claims pursuant to 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 1331, 1343(a)(3), and 1357. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

22. A three-judge district court is requested pursuant to 28 U.S.C. § 2284(a), as Plaintiff-Intervenors' action "challeng[es] the constitutionality of the apportionment of congressional districts" in Pennsylvania. Id.

23. Venue is proper under 28 U.S.C. §1391(b).

FACTUAL ALLEGATIONS

A. Legislative History and Background of the 2011 Plan

24. As the 2010 Census approached, the Republican State Leadership Committee ("RSLC") began formulating a strategy to keep or win Republican control of state legislatures—including Pennsylvania's—that would have the largest impact on congressional redistricting as a result of reapportionment.

25. In the words of the RSLC, the rationale behind this REDistricting Majority Project ("REDMAP") was "straightforward:"

> Controlling the redistricting process in these states would have the greatest impact on determining how both state legislative and congressional district boundaries would be drawn. Drawing new district lines in states with the most redistricting activity presented the opportunity to solidify conservative policymaking at the state level and **maintain a Republican stronghold in the U.S. House of Representatives for the next decade.**

Pennsylvania, which had long been known as a closely divided swing state, became a REDMAP target state in 2010. The RSLC spent nearly $1 million in the 2010 Pennsylvania House races, and was rewarded with GOP majorities in both chambers of the state legislature. Combined with former Republican Attorney General Tom Corbett's gubernatorial victory, Republicans took control of the state legislative and congressional redistricting process.

26. Congressional redistricting in Pennsylvania takes place through the regular legislative process: a bill defining the district boundaries is passed by both the Pennsylvania House and Senate and is signed by the governor.

27. On information and belief, beginning at least in early March of 2011, Republican state legislators and Republican operatives in Washington D.C., including operatives associated with the RSLC, worked together in secret to create a redistricting plan that would preserve Republican-held seats won in the unusually pro-Republican wave election of 2010. These efforts specifically aimed to protect such Republican-held seats not only in more typical, closely divided Pennsylvania elections, but also against a wave election in favor of Democrats. On information and belief, Republican map drawers accomplished this objective using sophisticated computerized mapping software and data that allowed them to predict the likely electoral outcomes of a hypothetical district, and to predict the likely electoral outcomes of small changes to the configuration of a hypothetical district.

28. On September 14, 2011, after seven months of developing a plan, Republican senators introduced Senate Bill 1249, the "Congressional Redistricting Act of 2011." The only description of any proposed district included in the bill was simply: "The [. . .] District

is composed of a portion of this Commonwealth." As a result, the legislation offered no meaningful opportunity for public review or comment.

29. On or around December 13, 2011, a full three months after introducing the bill, the Republican authors of the 2011 Plan publically released maps of the plan to the public for the first time. The Republican senators amended Senate Bill 1249 to include the actual descriptions of each of the districts on December 14, and the Senate passed the bill that same day.

30. A mere five days later, on December 20, the House passed Senate Bill 1249. It was signed into law by Governor Corbett on December 22, 2011.

31. During the debate on the Senate floor on December 14, Democratic Senator Jay Costa introduced an amendment to Senate Bill 1249 that he believed would create three times as many closely divided swing districts as the 2011 Plan, while still containing twice as many safe Republican districts as safe Democratic districts. Senator Costa's amendment was voted down on a party line vote.

32. Democratic Senator Anthony Williams stated that "the process was not fair, it was not inclusive, and it was not thoroughly open and honest in its attempt to include all Pennsylvanians, certainly not those of us from this side of the aisle."

33. In the House, Democratic Delegate Babette Josephs criticized the procedure by which the 2011 Plan was adopted:

> There were hearings, and my Republican counterpart, the individual from Butler County, has talked about them, how open they were, how unprecedented they were. Well, I will tell you they were unprecedented. I have never seen a hearing in this legislature on a blank bill – never. There were no maps. There were no verbal descriptions at any of the hearings that were the only exercises open to the public, not one map, not one description. You could not tell, looking at the bill or looking for a map, what the heck the Republicans had in mind, and believe me, the citizens had no idea. They came in – I was not able to be at all of the hearings –

> they came in and they asked sincerely. The people before us seemed to actually believe that the majority party was going to respond to them. It was astounding. They said, "Please do not tear apart my municipality." They said, "Please do not change this river valley," whether it was the Lehigh or another one. They said, "Please give us districts that are compact. Please give us districts that do not stack or fracture cultural, racial, or national minorities. Please do not do that. Please do not give us districts that tear apart communities of interest. Please do not give us districts that are going to exacerbate the partisan divide in Washington." They said all these things. I thank them for saying it, but nobody who has the power to draw this map, vote for this map, cared one whit what they said – not one whit. And had these citizens had the map this summer, there would have been an outcry that would have deafened us all, and that is why these citizens were not given the maps or the verbal descriptions.

34. While the Republican sponsors of the 2011 Plan were unsurprisingly circumspect in their public statements during the plan's adoption, statements made by observers at the time, only further demonstrate that the 2011 Plan was intended to entrench the Republican Congressional delegation regardless of the degree of popular support enjoyed by candidates of each party. For example, in a December 14, 2011 article titled "In Pennsylvania, the Gerrymander of the Decade?," Sean Trende, an analyst with Real Clear Politics and a testifying expert on behalf of the defendants in the *Whitford v. Gill* partisan gerrymandering case, concluded that the 2011 Plan was "probably the most effective gerrymander we've seen so far." He continued:

> Republicans in Pennsylvania [. . .] took a state that is two or three points more Democratic than the country as a whole, and created 12 districts (out of 18) that are more Republican than the country as a whole. They did so by creating what can only be called a group of Rorschach-inkblot districts in southeastern Pennsylvania.
>
> The net result is a map that shores up their vulnerable incumbents, and that may well result in a 14-4 Republican edge by the end of the decade.

35. Similarly, during the December 20, floor debate on the 2011 Plan, Democratic Representative Dan Frankel observed:

> Anybody looking at the way this has been gerrymandered can see that today, if we pass this, there is only going to be 1 truly swing congressional seat out of 18, and that is not good for our State. That is not good for our politics. That is not good for the style of government that we are now becoming accustomed to in Washington and Harrisburg: a polarized environment which will just reinforce the most extreme positions of the political spectrum. This is not the way we ought to be governing; to overreach, to go through contortions to create districts that are safe for a majority of Republican members of Congress is not good public policy.

36. Finally, after the 2012 General Election and the success of Congressional Republicans in Pennsylvania, the RSLC openly admitted that the purpose of the 2011 Plan was to entrench and maximize Republican influence over Pennsylvania's Congressional delegation, explaining that redistricting was "an opportunity to [. . .] maintain a Republican stronghold in the U.S. House of Representatives for the next decade." As the RSLC observed:

> President Obama won reelection in 2012 by nearly 3 points nationally, and banked 126 more electoral votes than Governor Mitt Romney. Democratic candidates for the U.S. House won 1.1 million more votes than their Republican opponents. But the Speaker of the U.S. House of Representatives is a Republican and presides over a 33-seat House Republican majority during the 113th Congress. How? One needs to look no farther than four states that voted Democratic on a statewide level in 2012, yet elected a strong Republican delegation to represent them in Congress: Michigan, Ohio, Pennsylvania and Wisconsin.

37. Though the RSLC acknowledged that "strong recruitment and [a] successful strategy [. . . of] going on offense over Democratic cuts to Medicare and by linking their Democratic opponents to President Obama's most unpopular policy proposals," were a component of Republicans' success in maintaining the House majority in 2012, the RSLC admitted that "all components of a successful congressional race, including recruitment, message development and resource allocation, rest on the congressional district lines, and this was an area where Republicans had an unquestioned advantage."

38. The RSLC celebrated its achievement in sending Republicans to Congress in 13 of 18 Pennsylvania districts despite Democratic Congressional candidates receiving tens of thousands more votes statewide. According to the RLSC:

> The impact of [the RSLC] investment at the state level in 2010 is evident when examining the results of the 2012 election: Pennsylvanians reelected a Democratic U.S. Senator by nearly nine points and reelected President Obama by more than five points, but at the same time they added to the Republican ranks in the State House and returned a 13-5 Republican majority to the U.S. House.
>
> [. . .]
>
> REDMAP's effect on the 2012 election is plain when analyzing the results: Pennsylvanians cast 83,000 more votes for Democratic U.S. House candidates than their Republican opponents, but elected a 13-5 Republican majority to represent them in Washington[.]

39. In other words, Pennsylvania's Congressional district lines were key to maintaining a Republican stronghold in Congress regardless of the degree of popular support for Republican candidates.

B. The 2011 Plan

40. A partisan gerrymander can be accomplished in two ways. Mapmakers can "pack" supporters of the disfavored party into a small number of districts that candidates of the disfavored party win by overwhelming margins. They can also "crack" supporters of the disfavored party, spreading them among the remaining districts such that candidates from the favored party win by narrower but still comfortable margins. The overwhelming differential between the share of Republican Congressional wins and the share of votes cast for Republican candidates statewide is powerful evidence that Pennsylvania's 2011 Plan packed and cracked voters who supported the Democratic Party in precisely this manner to maximize Republican power.

41. In 2012, despite the fact that more Pennsylvania voters supported Democratic candidates for Congress than Republican candidates statewide—approximately 50.8% of the two party vote cast statewide as opposed to 49.2% for Republicans—Democratic candidates prevailed in only 28% of Pennsylvania's Congressional districts (five of eighteen). Republicans, by contrast, prevailed in 72% of Pennsylvania's Congressional districts (thirteen of eighteen).

42. In those five districts, the Democrats won with approximately 77% of the two-party vote on average. In contrast, in the thirteen districts where Republicans prevailed, the Republican candidate attained only approximately 59% of the two-party vote.

43. The reason for such stark contrasts in the vote totals is plain. Democratic voters were packed into five districts where their candidates prevailed in overwhelming victories, ranging from 60% to 90% of the two party vote. And they were cracked among the remaining districts such that Republican candidates prevailed by margins that were comfortable but not overwhelming—generally between 56% and 65% of the two-party vote.

44. The 2014 and 2016 election results are virtually identical. In 2014, Republican congressional candidates won approximately 55% of the statewide two-party vote and, again, 72% of Congressional districts. The average two-party vote in the four districts won by Democratic candidates in contested elections was approximately 73%, while the eleven Republican winners in contested elections averaged approximately 63% of the two-party vote.

45. In 2016, Republican Congressional candidates won approximately 54% of the statewide two-party vote and, again, 72% of Congressional districts. The average two-party vote in the four districts won by Democratic candidates in contested elections was

approximately 75%, while the eleven Republican winners in contested elections averaged 61% of the vote. These outcomes are not only the obvious effect of the packing and cracking used to maximize and entrench Republican power under the 2011 Plan, but they were the 2011 Plan's purpose.

46. Virtually all available standards for detecting partisan gerrymandering—including but not limited to Efficiency Gap Analysis, Seats to Votes Curve Analysis, Mean-Median District Vote Share Analysis, and Computer Simulations—further demonstrate that Pennsylvania's 2011 Plan had the purpose and effect of packing and cracking voters who supported the Democratic Party in precisely this manner to maximize Republican power. These tests are further supported by the 2011 Plan's blatant defiance of traditional redistricting principles in many districts, which, together, demonstrate that the 2011 Plan is one of the most extreme partisan gerrymanders in the country. As Eric McGhee, a leading expert on partisan gerrymandering whose methodology was relied upon by the district court in *Whitford v. Gill*, has observed, "[n]o matter what concept you care about in partisan gerrymandering, Pennsylvania is going to be an outlier."

47. Many districts in the 2011 Plan fail to respect traditional redistricting criteria, forming highly irregular, non-compact districts that reveal the partisan nature of the map. For example, District 7—described by observers as one of America's most gerrymandered districts—snakes its way across Berks, Chester, Delaware, Lancaster, and Montgomery counties in a shape reminiscent of "Goofy kicking Donald Duck." As Figure 1 demonstrates below, the 2011 Plan (outlined and shaded in blue) shed voters from Philadelphia's inner ring suburbs around West Chester and King of Prussia (outlined and shaded in green), which were included in the previous district, to create District 7. These areas were replaced with jagged

appendages containing carefully selected precincts in and around Whitpain Township. Likewise, the 2011 Plan added a large and irregular swath of rural southeastern Pennsylvania running from Cochranville north to the Reading suburbs to District 7. And at several points, the district narrows to a mere 800 feet across.

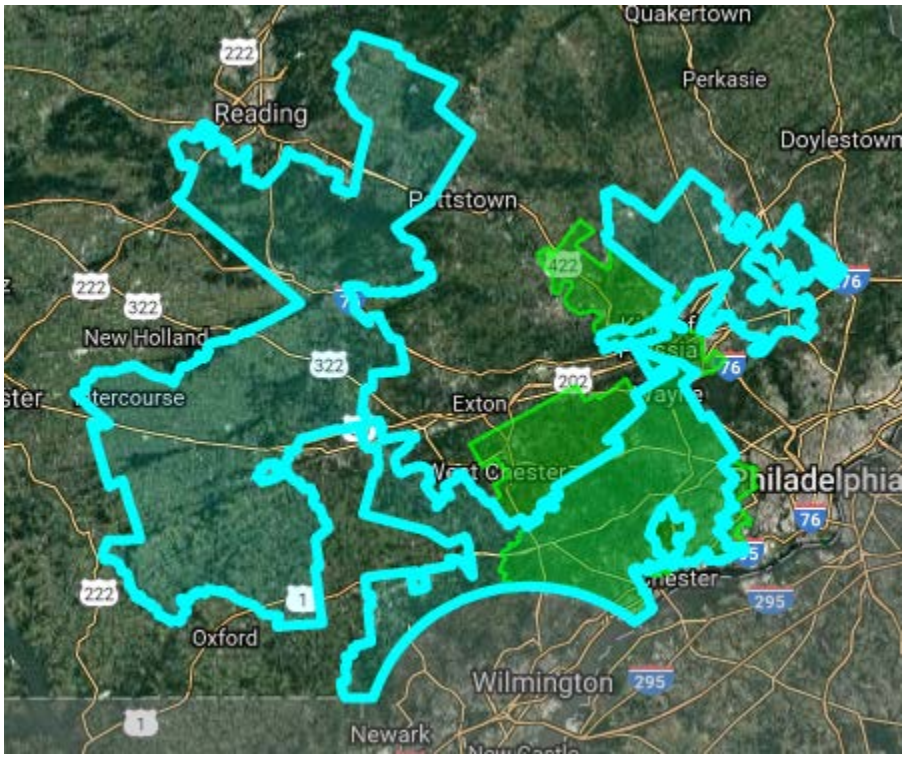

Figure 1: District 7 under the 2011 Plan (blue) and under the 2002 Plan (green)

48. The result has been a complete transformation of the district. Under the prior redistricting plan, District 7 swung from Republican to Democrat and then back to Republican. Under the 2011 Plan, it is now safely Republican, with the incumbent Republican Congressman being elected with 59%, 62%, and 59% of the vote in 2012, 2014, and 2016, respectively.

49. Other "Rorschach inkblot" districts include Districts 6 and 16. The 2011 Plan carefully carves out the Democratic-leaning city of Reading from District 6 to bolster

Republican voting strength, and then, as demonstrated in Figure 2 below, attaches Reading via a narrow, jagged appendage to District 16 in Lancaster County.

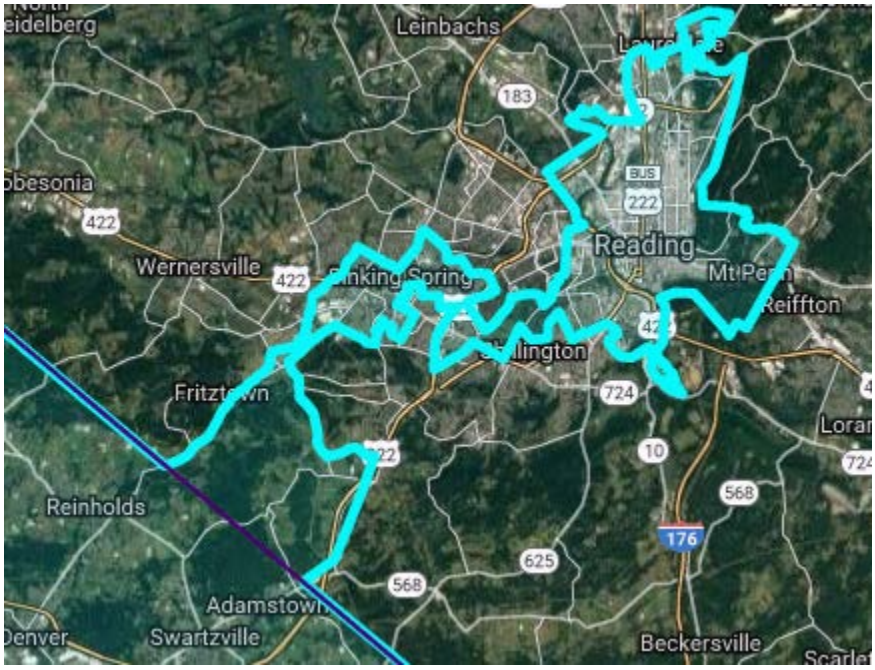

Figure 2: District 16 (in blue) and county boundary (in purple)

50. The 2011 Plan also fails to respect the boundaries of political subdivisions and communities of interest. For example, Montgomery County, which is populous enough to host its own Congressional district, is split among five different Congressional districts. Berks County is split between four districts; Chester County is split between three districts.

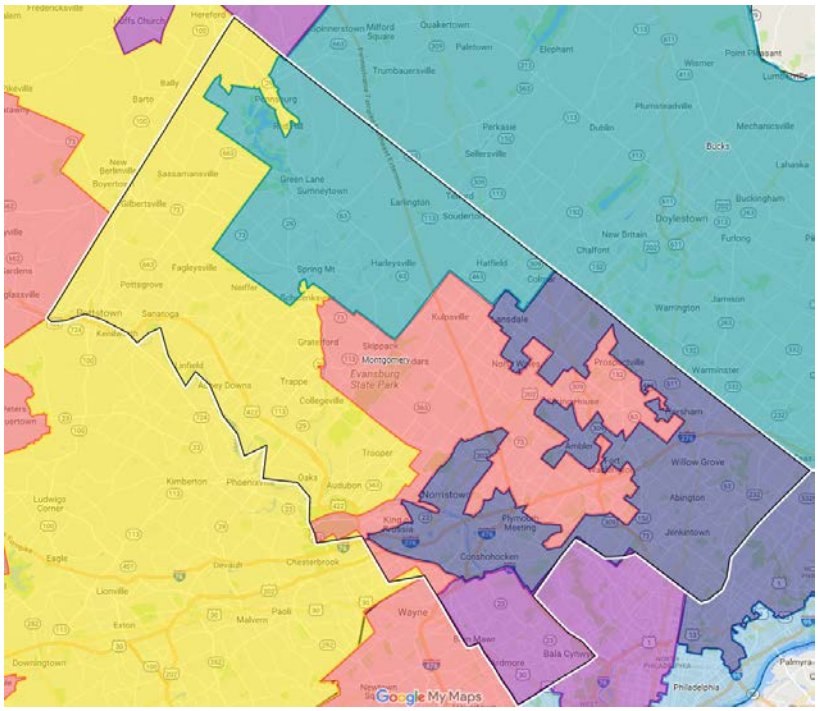

Figure 3: Montgomery County

51. More generally, in tests measuring the compactness of the districts in the 2011 Plan, the Plan scores poorly. One study comparing different states' congressional district compactness using a variety of compactness measures found that Pennsylvania was in the top ten states with the lowest average compactness.[1] Pennsylvania's placement in the top ten is particularly telling because most of the other states in the top ten, such as Maryland and Louisiana, have notable geography issues (*e.g.*, complex and irregular shorelines) that may partially explain their low compactness. By contrast, Pennsylvania's non-compact boundaries cannot be explained by such factors to the same degree.

52. Academic measures further support these findings. For example, one study measuring the Efficiency Gap, a measure of wasted votes in a state's elections, i.e., the votes cast for the losing candidate or votes cast beyond the number needed to win, found that

[1] *See* Azavea, Redrawing the Map on Redistricting 2012 Addendum 7 (2012), *available at* https://cdn.azavea.com/com.redistrictingthenation/pdfs/Redistricting_The_Nation_Addendum.pdf.

among states with six or more congressional districts, the 2011 Plan exhibited one of the two highest average Efficiency Gaps of any Congressional district plan in the country between 2012 and 2016.[2]

53. Another study applying the Seats to Votes Curve analysis, which looks at the share of seats won by candidates of a party in a particular year as compared to its statewide vote share as well as the historical average share of seats won as compared to the party's statewide vote share, found that among states with six or more congressional districts, the 2011 Plan exhibited one of the two highest average differences between the actual and expected seat share of any Congressional district plan in the country between 2012 and 2016.[3]

54. In another analysis looking at the mean-median district vote share difference, *i.e.*, the difference between the average vote share for a party across all districts in the state and the median district vote share for a party across all districts in a state, among states with six or more Congressional districts, Pennsylvania had a statistically significant pro-Republican difference between the average vote share and median district vote share in each election between 2012 and 2016. The same is true of only six other states in the country.[4]

55. Finally, computer simulations that generate millions of hypothetical districting scenarios that can be used as a benchmark to compare an adopted plan and determine the likelihood that an adopted plan would have been created in the absence of partisan

[2] *See, e.g.*, Laura Royden & Michael Li, Brennan Center for Justice, *Extreme Maps* 4-8 (2017)
[3] *See, e.g.*, *id.* at 9-11.
[4] *See, e.g.*, *id.* at 12-13.

manipulation, have shown that the partisan results of the 2011 Plan likely would not have occurred if the plan had been drawn without bias.[5]

56. Put plainly, there is simply no explanation or justification for the composition of the 2011 Plan, other than impermissible partisan intent to classify and burden Democratic-affiliated voters because of their participation in the electoral process and their expression of their political views. The 2011 Plan has deprived and will continue to deprive Pennsylvania voters of their voice in Congressional elections.

CAUSES OF ACTION

COUNT I
Denial of Equal Protection under the 14th Amendment of the U.S. Constitution pursuant to 42 U.S.C. § 1983

57. Plaintiff-Intervenors reallege and incorporate by reference the allegations in paragraphs 1-56.

58. The Fourteenth Amendment of the United States Constitution provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In *Carrington v. Rash*, 380 U.S. 89, 94 (1965), a case brought under the Equal Protection Clause, the Supreme Court held that "'[f]encing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible."

59. The 2011 Plan fails to provide Pennsylvania voters with equal protection of the laws as it has the purpose and effect of discriminating against an identifiable political group,

[5] *See, e.g.*, Maria Chikina, Alan Frieze & Wesley Pegden, *Assessing significance in a Markov chain without mixing*, 114 Proc. of the Nat'l Acad. of Sci. 2860, 2862-63 (2017); Samuel Wang, *Three Tests for Practical Evaluation of Partisan Gerrymandering*, 68 Stan. L. Rev. 1263, 1289-92 (2016).

by maximizing the power and influence of the Republican Party and Republican-affiliated voters and minimizing the power and influence of the Democratic Party and Democratic-affiliated voters, without regard to the degree of popular support enjoyed by each party's candidates.

60. The 2011 Plan purposely classifies an identifiable group of voters— those who registered to vote as Democrats, who lived in neighborhoods that supported Democratic candidates in the past, and who are anticipated to support Democratic candidates in the future—and singles out this group for disparate and unfavorable treatment. The 2011 Plan cracks and packs Democratic voters into districts where their votes will be asymmetrically wasted and their electoral influence will be severely diluted. The 2011 Plan is subject to strict scrutiny and cannot be justified by any compelling governmental interest. Nor is the 2011 Plan narrowly tailored to achieve any such governmental interest. Neither state political geography nor legitimate redistricting objectives can justify the extreme and durable partisan bias of the 2011 Plan.

COUNT II
Violation of the First Amendment Right to Freedom of Speech and Association pursuant to 42 U.S.C. § 1983

61. Plaintiff-Intervenors reallege and incorporate by reference the allegations in paragraphs 1-60.

62. Under the First Amendment, Plaintiffs have the right to express their political views, associate with and advocate for the political party of their choice, and participate in the political process. The First Amendment protects citizens against "a law that has the purpose and effect of subjecting a group of voters or their party to disfavored treatment by reason of their views." *Vieth v. Jubelirer*, 541 U.S. 267, 314 (2004) (Kennedy, J.,

concurring). Burdening, penalizing, or retaliating against citizens because of their participation in the political process, their voting history, their association with a political party, or their expression of their political views is highly disfavored and subject to strict scrutiny.

63. The 2011 Plan purposely burdens, penalizes, and retaliates against an identifiable group of voters based upon their past participation in the political process, their voting history, their association with a political party, and their expression of their political views. The Republican map drawers used voters' party registration, voting history, voting history of their neighbors and communities, and other data to single out voters who have demonstrated support for the Democratic Party and Democratic candidates in the past and who are anticipated to vote for Democratic candidates in the future. The 2011 Plan burdens and penalizes these forms of association and expression by cracking and packing these voters into districts where their votes will be asymmetrically wasted and their electoral influence will be severely diluted. In so doing, the 2011 Plan has also burdened the ability of these voters to influence the legislative process.

64. The 2011 Plan, by contrast, rewards other voters who expressed the opposite political preferences in the past and are anticipated to continue to express such political preferences in the future. Such voters, who have not been cracked or packed, enjoy greater influence over electoral and legislative outcomes.

65. The 2011 Plan is subject to strict scrutiny, and cannot be justified by any compelling governmental interest. Nor is the 2011 Plan narrowly tailored to achieve any such governmental interest. Neither state political geography nor legitimate redistricting objectives can justify the extreme and durable partisan bias of the 2011 Plan.

COUNT III
Violation of Article I, Section IV of the U.S. Constitution pursuant to 42 U.S.C. § 1983

66. Plaintiff-Intervenors reallege and incorporate by reference the allegations in paragraphs 1-65.

67. The 2011 Plan and each of the eighteen Congressional districts created by it are invalid because they were adopted in excess of the authority granted to the Pennsylvania General Assembly by Article I, Section 4 of the U.S. Constitution to determine "the Times, Places and Manner of holding Elections" of members of the House of Representatives, which is the sole source of a state's authority to draw Congressional district lines.

68. The Elections Clause only allows legislatures to adopt procedural rules for the conduct of Congressional elections, and does not include the power to dictate or control the electoral outcomes of those elections or favor or disfavor a class of candidates. *See Cook v. Gralike*, 531 U.S. 510, 527 (2001); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 833-34 (1995).

69. The Pennsylvania General Assembly exceeded its constitutional authority in the 2011 Plan by gerrymandering Pennsylvania's eighteen Congressional districts to control electoral outcomes in each district and favor the Republican Party and its candidates, ensuring that Republican candidates would prevail in thirteen of the eighteen Congressional districts despite earning less than or a bare majority of votes statewide. The 2011 Plan will continue to ensure that Republican candidates prevail in these thirteen Congressional districts regardless of the share of partisan support that congressional candidates realistically earn on a statewide basis in the future. As a result, the 2011 Plan contravenes the Elections Clause and is unconstitutional.

PRAYER FOR RELIEF

Plaintiff-Intervenors respectfully request that the Court enter judgment in their favor and against Defendants, and:

A. Declare that the 2011 Plan is unconstitutional because it violates Article I, Section IV of the U.S. Constitution, the 14th Amendment to the U.S. Constitution, and the 1st Amendment to the U.S. Constitution;

B. Permanently enjoin Defendants, their agents, officers, and employees from administering, preparing for, or moving forward with any future primary or general elections of Pennsylvania's U.S. House members using the 2011 plan;

C. Make any and all orders that are just, necessary, and proper to preserve Plaintiff-Intervenors' constitutional rights to equally participate in elections of Congressional seats;

D. Award Plaintiff-Intervenors for their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. §§ 1988, 1973(e); and

E. Grant any and all other relief this Court deems just and proper.

Dated: November 3, 2017

By: *s/ Adam C. Bonin*

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CERTIFICATE OF SERVICE

I certify that on November 3, 2017, I filed the foregoing with the Clerk of the Court using the ECF System which will send notification of such filing to the registered participants as identified on the Notice of Electronic Filing.

Date: November 3, 2017

s/ Adam C. Bonin
Adam C. Bonin