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

JACOB CORMAN, in his official capacity as Majority Leader of the Pennsylvania Senate, MICHAEL FOLMER, in his official capacity as Chairman of the Pennsylvania Senate State Government Committee, LOU BARLETTA, RYAN COSTELLO, MIKE KELLY, TOM MARINO, SCOTT PERRY, KEITH ROTHFUS, LLOYD SMUCKER, and GLENN THOMPSON, Plaintiffs, v. ROBERT TORRES, in his official capacity as Acting Secretary of the Commonwealth; JONATHAN M. MARKS, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation, Defendants.	CIVIL ACTION No. 1:18-cv-00443-CCC-KAJ-JBS Three-Judge Panel Pursuant to 28 U.S.C. § 2284(a) Circuit Judge Kent Jordan Chief Judge Christopher Conner District Judge Jerome Simandle

BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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Defendants, Acting Secretary of the Commonwealth Robert Torres and Commissioner of the Bureau of Commissions, Elections, and Legislation Jonathan M. Marks, respectfully submit this brief in opposition to Plaintiffs' Motion for Preliminary Injunction (the "Motion").

I. INTRODUCTION

Plaintiffs, a group of federal and state legislators, ask this federal court to overturn the Pennsylvania Supreme Court's ruling on an issue of state law: that the congressional districting map that Pennsylvania enacted in 2011 was a partisan gerrymander that violated the Pennsylvania Constitution. Plaintiffs demand that this Court enjoin use of the remedial map that the Pennsylvania Supreme Court has put in place, an action that would require the Commonwealth to either postpone an upcoming primary election, an enormously disruptive step that would cost taxpayers more than $20 million, or cancel it. If the Court grants the relief that Plaintiffs seek, dozens of congressional candidates who have already circulated their nomination petitions will have to discard them and start again, and Pennsylvania voters will have to go to the polls under a congressional districting map that the Pennsylvania Supreme Court has held to be unconstitutional. A grant of this relief would cause incalculable harm to the public, to candidates, to state and local elections officials, and to the Commonwealth as a whole.

In order to justify subjecting a state's election process to such serious, irreparable, and wide-ranging disruption, Plaintiffs would have to show that they will suffer even greater harm if the Court does not act. Plaintiffs cannot come close to making this showing; in fact, they cannot show that they will be harmed at all. They delayed filing this lawsuit for weeks, a delay that renders this Court unable to grant them relief without derailing a scheduled election. Plaintiffs speculate about theoretical harms to constituents, communities, and the Pennsylvania legislature, but do not explain how they themselves can be harmed. Plaintiffs plainly disagree with the outcome of the state court lawsuit, but their angry rhetoric, without more, does not show irreparable harm. Plaintiffs' disagreement does not even rise to the level of concrete and particularized harm that would confer standing; it certainly cannot justify a remedy that would derail a statewide election.

Plaintiffs also cannot show that they have any chance of succeeding in this lawsuit, let alone that they are reasonably likely to succeed on the merits. Indeed, Plaintiffs' claims are so deficient in so many aspects that they should not survive Defendants' concurrently filed Motion to Dismiss. First, it is inappropriate for a federal court to interfere in ongoing state court litigation or to overrule a state court's interpretation of state law; this is not one of those rare cases where such an intrusion into a sister court's authority is permissible. Second, Plaintiffs lack

standing to bring their claims. Third, the Pennsylvania state court's rulings preclude Plaintiffs' claims. Fourth, the Elections Clause of the U.S. Constitution simply cannot support the interpretation that Plaintiffs try to give to it.

Even if Plaintiffs' claims could get past all these legal hurdles, they would fail on the facts. Plaintiffs insist, for example, that the Pennsylvania Supreme Court did not give the Pennsylvania legislature an "adequate opportunity" to pass a law with new congressional districts. The undisputed facts show, however, that the Pennsylvania Supreme Court gave the General Assembly ample time, and that the General Assembly could have voted on a new map if its leadership, which includes two of the Plaintiffs, had allowed that vote to happen.

Plaintiffs contend, with no evidentiary support, that implementation of the new congressional map is causing chaos, confusion, and voter uncertainty. This is simply not so. The map is in place, and preparations for the 2018 primary are going forward as smoothly as preparations for any other election. If this Court grants Plaintiffs' motion, however, chaos and confusion are inevitable.

II. STATEMENT OF FACTS

A. The Pennsylvania Supreme Court Strikes the 2011 Plan on the "Sole Basis" That It "Clearly, Plainly and Palpably Violates" the Pennsylvania Constitution

In *League of Women Voters, et al., v. The Commonwealth of Pennsylvania, et al.*, No. 159 MM 2017 (the "State Court Litigation"), the Petitioners, a group of

Pennsylvania voters, alleged that the congressional districting plan set forth in the Pennsylvania Congressional Redistricting Act of 2011, 25 P.S. §§ 3596.101, *et seq*. (the "2011 Plan") was a partisan gerrymander that violated their rights under the Pennsylvania Constitution. A judge of the Pennsylvania Commonwealth Court held a weeklong trial and issued recommended findings of fact and conclusions of law, finding that the Petitioners had shown intentional discrimination, but that Pennsylvania law did not provide them with a remedy. *See* Affidavit of Representative Frank Dermody ("Dermody Aff."), attached hereto as Exhibit A, at Ex. 1 at COL ¶¶ 58-65. The Pennsylvania Supreme Court ordered briefing and heard oral argument. On January 22, 2018, it issued a per curiam Order holding that the 2011 Plan "clearly, plainly and palpably violates the Constitution of the Commonwealth of Pennsylvania, and, on that sole basis, we hereby strike it as unconstitutional." Compl. Ex. B at 2.[1]

In the January 22 Order, the Pennsylvania Supreme Court gave the General Assembly and the Governor 24 days to enact a remedial map:

> [S]hould the Pennsylvania General Assembly choose to submit a congressional districting plan that satisfies the requirements of the Pennsylvania Constitution, it shall submit such plan for consideration by the Governor on or before **February 9, 2018.** If the Governor accepts the General Assembly's congressional districting plan, it

[1] Detailed descriptions of the background of the 2011 Plan and the procedural history of the State Court Litigation are set forth in the Intervenors' Brief in Opposition to Motion for Preliminary Injunction ("Intervenor Br.").

> shall be submitted to this Court on or before
> **February 15, 2018.**

Id. at 2 (emphasis in original). The court also set forth the criteria for a remedial map: "[T]o comply with this Order, any congressional districting plan shall consist of congressional districts composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population." *Id.* at 3.

The Order noted that an Opinion would follow. *Id*. It did not tell the parties to defer work on a remedial map until after the Opinion issued, and did not suggest that the Opinion would change the criteria set forth in the Order.

B. The Pennsylvania Supreme Court Gives the General Assembly Enough Time to Draft and Vote On a Remedial Map

1. Plaintiffs' Counsel Concedes at Oral Argument That Three Weeks Is Sufficient Time for the Legislature to Act

By January 17, 2018, the date of the Pennsylvania Supreme Court oral argument, the parties and the court were aware that a critical election deadline was just over a month away. Defendant Marks, who was a Respondent in the State Court Litigation, had submitted an affidavit to the Commonwealth Court stating that in order to hold the congressional primary election as scheduled, on May 15, 2018, any new congressional districting map would have to be put in place by February 20, 2018. *See* Affidavit of Commissioner Jonathan M. Marks

("Marks Aff."), attached hereto as Exhibit B, at ¶¶ 18-19 and Ex. 1. Thus, it was clear that if the Supreme Court struck the 2011 Plan, a remedial plan would be needed in less than a month. At oral argument, no one contended that this time would be inadequate.

In fact, attorneys for the Republican caucus leaders who were respondents in the State Court Litigation, House Speaker Michael Turzai and Senate President Pro Tem Joseph Scarnati (the "Legislative Respondents"), conceded that the General Assembly would have enough time to act. Justice Baer asked counsel for Legislative Respondents, Jason Torchinsky,[2] how much time the legislature would need to draft a remedial map:

> Justice Baer: Assume, reluctantly, that you do not prevail in constitutionality is three weeks a fair opportunity for a legislature to redraw these maps? Because I think it should get the opportunity.
>
> Mr. Torchinsky: Your Honor, as I mentioned at the beginning, I'm going to defer to Mr. Braden on a remedy. But I think we would like at least three weeks . . . .

See Declaration of Michele D. Hangley ("Hangley Decl."), attached hereto as Exhibit C, at Ex. 1, 103:19-104:2. Mr. Braden requested "maybe a month" so that candidates would have "a chance to do the politics here":

> Here are people running and deciding where to run, and are actually running right now as we speak, and that any

[2] Mr. Torchinsky is also counsel for Senators Jacob Corman and Michael Folmer (the "State Plaintiffs") in this case.

> remedy should be for the next election. If you're saying that we're not going to do that, then maybe a month. Give them a chance to do the politics here.

Id. at 127:14-19.

2. For Reasons That Are Not Clear, the General Assembly Never Votes on a Proposed Remedial Map

(a) The General Assembly Prepares to Vote on a Map on Short Notice

Under Article III, Section 4 of the Pennsylvania Constitution, the General Assembly can pass legislation in as little as five days. Dermody Aff. ¶ 14. The 2011 Plan, for example, moved through the legislative process in 16 days, less time than the General Assembly was given in this case. *Id.* ¶ 15. A "shell" bill with no descriptions of the districts, S.B. 1249, was introduced in the Senate on December 7, 2011; legal descriptions were added on December 14; and the bill was passed, and signed by the then-Governor, on December 22. *See id*. ¶¶ 16, 19, 22.

Shortly after the January 22 Order issued, the General Assembly began taking steps that would have allowed it to vote on a remedial map quickly, as it had done in 2011. On January 29, 2018, Senate Bill 1034 was introduced in the Senate. *Id*. ¶ 23; Affidavit of Senator Jay Costa ("Costa Aff."), attached hereto as Exhibit D, at ¶15. This bill repealed the statutory descriptions of the districts included in the 2011 Plan and replaced them with "shell" language, as had happened in 2011. *See* Dermody Aff. ¶ 23; *id.* Ex. 5; Costa Aff. ¶¶ 16-17. The Senate considered the measure on January 29 and 30 and approved it on final

passage on January 31. Dermody Aff. ¶¶ 24; Costa Aff. ¶¶ 15, 18. The bill then moved to the House of Representatives, where it was reported to the State Government Committee on February 1, and reported out of committee and given first consideration on February 6. Dermody Aff. ¶ 24-25; Costa Aff. ¶¶ 19-20.

At that point, it would have been possible to amend the bill to include legal descriptions of a proposed map and pass the bill by February 9. *See* Dermody Aff. ¶ 26; Costa Aff. ¶¶ 26-27. Instead, the General Assembly let S.B. 1034 die on the vine. The majority leaders did not try to amend the bill or schedule additional session days. Dermody Aff. ¶ 28; Costa Aff. ¶¶ 26, 29.

(b) The General Assembly Leadership Chooses Not to Work on a Map Until the Last Minute, Then Drafts One in Two Days

Plaintiffs appear to concede that members of the General Assembly did not begin work on a remedial map until the Pennsylvania Supreme Court issued its Opinion on February 7, 2018. *See* Plaintiffs' Brief in Support of Motion for Preliminary Injunction ("Br.") at 11-12 ("[W]ithout the benefit of the rationale and benchmarks contained in the extensive Majority Opinion, the Legislature simply could not begin formulating a cogent and compliant redistricting plan."). The reasons for this delay are not clear. A February 5 newspaper article reported on the comments of Senator Corman, the lead plaintiff in this action:

> [L]eaders hadn't had many meetings to discuss specifics of the maps. Corman said that leaders must decide

> whether they have the desire to try to draw a new one. . . . "There is some thought that the Supreme Court is going to throw out anything we give them anyway, so what's the purpose of us going through all this work to just have them throw it out?"[3]

Another article, from February 6, reported that "GOP leaders seemed to hit a moment of reckoning after [the previous day's] decision by U.S. Supreme Court Justice Samuel Alito denying their request for a stay of the state court's order," and "[t]op Senate and House staffers said . . . their leaders had resigned themselves to try to comply with" the January 22 Order.[4]

Once the legislature's leaders began drafting a map, they completed the job in two days, claiming to have had no difficulty in complying with the Pennsylvania Supreme Court's rulings. *See* Hangley Decl. at Ex. 2 (Letter from Legislative Respondents stating that they produced a map in the "short time period" after the February 7 Order); *see also* Press Release, Pennsylvania Legislative Leaders Submitting Congressional Map (Feb. 9, 2018). [5]

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[3] Jonathan Lai & Liz Navratill, "SCOTUS denies Pa. GOP lawmakers' attempt to delay drawing new congressional map," Philly.com, Feb. 5, 2018, https://goo.gl/yFkf8j

[4] Charles Thompson, "A reluctant Pa. legislature settles in for a map-making cram session," Pennlive.com, Feb. 6, 2018, https://goo.gl/T2kkP9

[5] http://www.senatorscarnati.com/2018/02/09/pennsylvania-legislative-leaders-submitting-congressional-map-2/.

(c) Even After the General Assembly Leadership Has a Proposed Map in Hand, They Do Not Bring It to a Vote

In the days after Speaker Turzai and President Pro Tempore Scarnati issued their map, the "General Assembly still had time to convene session and pass a remedial congressional districting plan to present to the Governor for his consideration on or before the February 15 deadline for his approval." Dermody Aff. ¶ 31. The Legislative Respondents stated that they could bring their joint map, or another map, to a vote before February 15 deadline. On February 13, for example, after Governor Wolf rejected their map, the Legislative Respondents wrote to Governor Wolf, "Quit being coy . . . . Produce your map and we will put it up for a vote." Hangley Decl. at Ex. 2 at 2; *see also, e.g.*, "GOP leaders unveil revamped Pa. congressional map," Triblive, Feb. 9, 2018[6] ("Crompton said . . . a decision about whether to bring [the map] up for floor votes early next week will partially depend on the response from Wolf.").[7] Despite all this talk about votes, the General Assembly's leadership never scheduled additional session days and never voted on a map.

[6] http://triblive.com/state/pennsylvania/13284571-74/pa-republicans-say-theyve-revised-gerrymandered-district-map.

[7] It was not necessary to seek Governor Wolf's approval before voting on a proposed map. "No law or procedural rule of the General Assembly requires

C. The Department of State Has Implemented the Current Plan Quickly and Without Complications

As the State Court Litigation progressed, the Bureau of Commissions, Elections and Legislation (the "Bureau") determined that if the 2011 Plan was held to be unconstitutional, it would be challenging, but possible, to put a new districting map into place in time for the May 15, 2018 primary. The Bureau carefully considered all aspects of the elections calendar and calculated that if a new map issued by February 20, 2018, and if the Department of State (the "Department") implemented a combination of internal administrative adjustments and Court-ordered date changes, the May 15 primary date could hold. *See* Marks Aff. ¶ 15. Throughout the State Court Litigation, the Executive Branch Respondents repeatedly informed the courts and the other parties that pushing the issuance of a new map beyond February 20 would likely mean that the May 15 primary could not go forward, at least for congressional candidates. *See, e.g.*, Marks Aff. Ex. 1.

The Pennsylvania Supreme Court honored the Department's scheduling needs. In its January 22 Order, it announced that "a congressional districting plan will be available by February 19, 2018." Compl. Ex. B at 3. It met that deadline, adopting a remedial map (the "Current Plan") on that date. In the month between

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gubernatorial approval prior to the amendment or passage of legislation." Costa Aff. ¶ 30.

the January 22 Order and the release of the Current Plan, the Department engaged in intensive internal planning efforts to ensure that it could put the Current Plan in place as quickly and efficiently as possible. *See* Marks Aff. ¶¶ 20-25.

On the day after the Current Plan was released, the Department began a multi-pronged implementation effort involving database updates, social media outreach, voter and candidate education, and a purchase of $150,000 in newspaper space. *Id.* ¶¶ 26-48. These efforts have continued at a rapid pace between the release date and today. To date, the Department's implementation of the Current Plan has been a success. Nomination petitions were available online five days before February 27, the first day of the petition circulation period. *Id.* ¶ 30. To date, 150 candidates have downloaded petition packets, and presumably have begun to circulate their petitions. *Id.* ¶ 31.

Defendant Marks has observed that in his close dealings with elections officials from the Commonwealth's counties, he has not heard any reports that implementation of the Current Plan is causing unusual confusion or difficulty. *Id*. ¶ 50. From the counties' point of view, little needs to be done other than some data entry in some counties. *Id*. ¶ 51. Under the Current Plan, election dates, polling locations, and election rules are the same as they were under the 2011 Plan. *Id*. ¶ 52. The Department and the counties are on track to meet all election-related

deadlines, including deadlines required under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 52 U.S.C. §§ 20301 *et seq.* *Id.* ¶ 56.

D. If the Current Plan Is Replaced, the Commonwealth Will Have to Postpone or Cancel the Primary Election

Now that the election cycle has begun under the Current Plan, reversing course would make it impossible to hold the 2018 congressional primary as scheduled. *Id*. ¶ 70. As Defendant Marks has explained, the Department compressed its schedule in order to accommodate the Current Plan, but there is no additional room for changes. *Id.* ¶ 72. Accordingly, if use of a different map is ordered now, candidates will not have sufficient time to circulate petitions, collect signatures, and submit nomination petitions before the County Boards of Elections' March 26 absentee ballot deadline. *Id.* ¶ 71. The Department would also have to conduct an entirely new wave of outreach to ensure that candidates, County Boards of Elections, and the public were aware of the changes. *See, e.g.*, *id.* ¶ 26. Petitions would need to be recirculated and signatures collected anew, causing competing sets of nomination petitions that require lengthy, manual review. *Id.* ¶ 73. The time and funds spent preparing to hold the 2018 primary under the Current Plan would have to be spent again. *Id.* ¶ 74. And all of these efforts would need to happen without any of the advance preparation and coordinated strategy that enabled the Department to put the Current Plan in place so rapidly. *Id.* ¶ 75.

The ripple effect of these delays would inevitably require the Commonwealth to postpone the 2018 primary, at an additional cost of $20 million that would fall primarily on the counties. *Id.* ¶ 79. Rescheduling the primary would also cause a great deal of confusion: staff and polling places that have been reserved for May 15 may not be available at a later date, and educating the public on new dates will be far more difficult on the heels of the Department's consistent messaging that the Current Map would not result in changes in polling places, rules, or major dates. *Id.* ¶¶ 80-81; *id.* Ex. 6.

III. STATEMENT OF QUESTIONS PRESENTED

1. Have Plaintiffs shown a reasonable probability of success on their claims for a violation of the Elections Clause of the U.S. Constitution?

2. Are Plaintiffs entitled to a preliminary injunction where they delayed filing suit for weeks and waited until a new congressional map was put in place, and where a grant of the relief they seek will require postponing or cancelling Pennsylvania's upcoming primary election?

3. Is it in the public interest to grant relief that will require either postponing the primary election, at a cost to the public of more than $20 million, or cancelling it entirely?

IV. ARGUMENT

A preliminary injunction is "an extraordinary remedy." *American Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3d Cir. 1994) (quotation omitted). Such relief is only warranted when a movant can "convince the court that (1) the movant has shown a reasonable probability of success on the merits; (2) the movant will be irreparably injured by denial of relief; (3) granting preliminary relief will not result in even greater harm to the other party; and (4) granting preliminary relief will be in the public interest." *ECRI v. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987) (citing *SI Handling Systems, Inc. v. Heisley*, 753 F.2d 1244, 1254 (3d Cir. 1985)). Plaintiffs fall far short of carrying their burden on any of these requirements.

Although Plaintiffs could not meet their burden in any event, a suit seeking injunctive relief related to an upcoming election faces an even higher burden. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (requiring court, in addition to the regular preliminary injunction facts, to evaluate "considerations specific to election cases and its own institutional procedures"). And because Plaintiffs seek to disturb, rather than maintain, the status quo, they are faced with a higher burden yet. *See, e.g.*, *Doe v. New York Univ.*, 666 F.2d 761, 773 (2d Cir. 1981) ("Where, as here, mandatory relief is sought, as distinguished from maintenance of the status quo, a strong showing of irreparable injury must be made, since relief changing the

status quo is not favored unless the facts and law clearly support the moving party.").

A. Because Plaintiffs' Claims Fail Factually and Legally, Plaintiffs Cannot Show a Reasonable Probability of Success

1. Plaintiffs' Claims Are Legally Deficient and Should Not Survive Defendants' Motion to Dismiss

As the concurrently filed Motions to Dismiss of Defendants and Intervenors make plain, Plaintiffs are not only unlikely to succeed on the merits, they are unlikely to make it past multiple threshold barriers to judicial review. First, under the *Rooker-Feldman* doctrine, suits that "essentially invite[] federal courts of first instance to review and reverse unfavorable state-court judgments" must be "dismissed for want of subject-matter jurisdiction." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-284 (2005); *see* 28 U.S.C. § 1257. Second, this Court should abstain under the doctrine announced in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976) , which calls on federal courts to abstain when "there is a parallel state proceeding that raises substantially identical claims and nearly identical allegations and issues." *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 307 (3d Cir. 2009). Third, this Court is required to give "the same preclusive effect to a state-court judgment as another court of that State would give." *Parsons Steel Inc. v. First Ala. Bank*, 474 U.S. 518, 523 (1986). Here, the Elections Clause issue was actually litigated and

decided in the Pennsylvania Supreme Court and so issue preclusion bars this Court from reconsidering the Pennsylvania Supreme Court's judgment. *See In re Stevenson*, 40 A.3d 1212, 1223-1224 (Pa. 2012). Finally, Plaintiffs lack Article III standing to bring this challenge.

2. Plaintiffs Cannot Show That the Legislature Was Not Given a Reasonable Opportunity to Enact a Remedial Map

Even if this Court finds that the Elections Clause did require the legislature to have another chance at drawing district lines, the undisputed record demonstrates that the Pennsylvania Supreme Court gave it just such an opportunity. After that court struck down the 2011 Plan as unconstitutional under the Pennsylvania Constitution, the court gave the General Assembly an opportunity to craft a constitutional map. Compl. Ex. B at 2. In its Order, the court provided the General Assembly with clear, familiar criteria for drawing the new plan, requiring any map to consist of "congressional districts composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population." *Id.* at 3. These traditional districting principles have "deep roots in Pennsylvania constitutional law," *Holt v. 2011 Legislative Reapportionment Comm'n*, 38 A.3d 711, 745 (Pa. 2012), and are widely recognized by courts, both state and federal, considering challenges to congressional redistricting plans. *See, e.g., Shaw v. Reno*, 509 U.S. 630 (1993);

Vieth v. Jubelirer, 541 U.S. 267 (2004); *see also Legislature v. Reinecke*, 516 P.2d 6 (Cal. 1973).

Plaintiffs' claim that these criteria were "newly-hatched," Br. at 7, is specious. Indeed, at oral argument, counsel for Legislative Respondents (and for State Plaintiffs in this case) assured the court that they were well aware of these traditional districting principles and how to apply them. *See* Hangley Decl., Ex. 1 at 88:22-89:23. The court's written Opinion did not change any of those criteria, but merely applied them to the 2011 Plan.[8] Indeed, the Opinion repeated the wording of the Order verbatim and "emphasize[d] that, while explicating our rationale, nothing in this Opinion is intended to conflict with, or in any way alter, the mandate set forth in our Order of January 22, 2018." Compl. Ex. F at 4; *see also id.* at 123.

The Court also granted Legislative Respondents adequate time to enact a remedial plan. At oral argument, Legislative Respondents' counsel represented that the General Assembly "would like at least three weeks" to draw a new map.

[8] Plaintiffs' attempt to reinterpret the opinion as setting a standard of proportional representation must fail. The court was simply underscoring the fundamental principle, which dates back to *Reynolds v. Sims*, that every citizen is entitled to a vote equal to every other citizen, and that the 2011 Plan violated that principle by diluting certain citizens' votes.

Hangley Decl., Ex. 1 at 103:24-104:2.[9] The January 22 Order gave the General Assembly 18 days to send a new map to the Governor for review.[10] This period was plainly sufficient, particularly in light of the U.S. Supreme Court's recognition of "the reality that States must often redistrict in the most exigent circumstances." *Growe v. Emison*, 507 U.S. 25, 35 (1993).[11] As the Pennsylvania Supreme Court explained in its order adopting the Current Plan, the timeline it adopted required it to balance the requests of the parties and the Governor's representation that, to hold the primary on May 15, a plan would need to be in place by February 20.

[9] Legislative Respondents' co-counsel suggested the General Assembly "need[s] a month" – only slightly more time than the Court allotted. *See* Hangley Decl., Ex. 1 at 127:17-19.

[10] Courts routinely give legislatures the same or less time to remedy redistricting violations, especially "given recent advances in computer technology" that ensure "constitutional plans can be crafted in as short a period as one day." *Larios v. Cox*, 305 F. Supp. 2d 1335, 1342 (N.D. Ga. 2004) (giving the state legislature nineteen days to craft a new plan); *see also Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 679 (E.D. Pa. 2002) (three weeks); *Stephenson v. Bartlett*, 582 S.E.2d 247, 248-249 (N.C. 2003) (20 days); *Common Cause v. Rucho*, --- F. Supp. 3d ---, 2018 WL 341658, at *76 (M.D.N.C. 2018), *stayed on other grounds sub nom. Rucho v. Common Cause*, No. 17A745, 2018 WL 472142 (U.S. Jan. 18, 2018) (two weeks). In fact, North Carolina has codified a two-week period for the legislature to remedy a defective plan, after which the court will impose its own plan. N.C. Gen. Stat. § 120–2.4.

[11] And, indeed, the Pennsylvania General Assembly itself has successfully adopted redistricting legislation in less time in the past. *See* Dermody Aff. ¶ 15 (noting that the 2011 Plan was adopted in 16 days); *see also Mellow v. Mitchell*, 607 A.2d 204, 205 (Pa. 1992) (affirming Commonwealth Court's adoption of a court-ordered plan after General Assembly failed to enact a compliant plan within 12 days).

Compl. Ex. J at 3 n.2. Tellingly, neither Legislative Respondents nor anyone else sought additional time to adopt a compliant map. Compl. Ex. J at 5.

Instead, although the General Assembly considered a "shell" bill that would permit legal descriptions of the district boundaries to be added and a plan passed by February 9, Legislative Respondents never brought that plan to a vote. Dermody Aff. ¶¶ 26-29. Rather than ask the General Assembly to vote on a plan, Legislative Respondents devised their own plan and submitted it to Governor Wolf for his consideration. *Id.* ¶ 29. And even after the Governor rejected that map, Legislative Respondents made no attempt to advance the pending redistricting bill in the General Assembly. *Id.* ¶ 31.

B. Plaintiffs Cannot Demonstrate a Cognizable Injury, Let Alone Irreparable Harm

Plaintiffs rest their entire claim of irreparable harm on the fact that the Pennsylvania Supreme Court Order 1) invalidates a piece of enacted legislation and 2) imposes a Remedial Plan that "alter[s] voting districts and election results." Br. at 17. Neither of these is a proper basis for a finding of irreparable harm.

The fact that the Pennsylvania court struck the 2011 Plan as unconstitutional and adopted remedial districts is not, in and of itself, an irreparable harm. Plaintiffs simply have *no* legal right to have elections proceed under an unconstitutional map. Nor does the timing of the Pennsylvania Supreme Court's order somehow create such a right. As the U.S. Supreme Court has explained,

"once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). This is not such an "unusual" case. A remedial plan is already in effect that will permit the 2018 elections to proceed as scheduled. Marks Aff. ¶¶ 26-52. Plaintiffs cite no evidence for their hyperbolic claims that this schedule is "radically altered," Br. at 17, nor will they be able to produce any such evidence, because the most significant election dates have not changed *at all*.

As discussed above, Plaintiffs also cannot show that they were deprived of an opportunity to draw a new map. *See* pp. 17-20, *supra*. They simply failed to take advantage of it. Plaintiffs may not complain of "irreparable" harms of their own creation.

C. A Grant of the Relief Plaintiffs Seek Would Cause Enormous and Irreparable Harm to Defendants and to the Public

The balance of the harms and the public interest also weigh decisively in favor of Defendants. At this late date, the preliminary injunction that Plaintiffs request would require postponing or cancelling the 2018 primary elections, and would force the residents of Pennsylvania to endure yet another election cycle under a map that "clearly, plainly, and palpably" violates the state's constitution.

1. Now That the 2018 Election Cycle Is Underway, Any Injunction Would Be Severely Disruptive

Courts are understandably extremely reluctant to impose last-minute changes to voting rules just before an election. In this case, the Pennsylvania Supreme Court made every effort to expedite its proceedings to ensure that it could order relief with sufficient time for the implementation of a new map, should that prove necessary. The Court's efforts proved fruitful and ensured that a new map was in place in time for state executive officials, including Defendants, to implement the necessary changes to be ready for the primary. That process is nearly complete, and the election cycle has begun. Millions of voter registration files have been updated to enable candidates to obtain voter lists. *See* Marks Aff. ¶¶ 32-33. The Department is carrying out a coordinated communications and social media campaign to ensure candidates and voters are informed of the Current Plan. *Id.* ¶¶ 35-48. New petitions, specifically tailored to the congressional districts in the Current Plan, have been posted, downloaded by 150 candidates, and are being circulated. *Id.* ¶¶ 30-31. As a result, it would be profoundly disruptive for a federal court to enter an injunction now, and doing so would require that the May 15 primary be postponed or cancelled.[12]

[12] The Pennsylvania Election Code establishes rare instances in which parties, rather than voters in primary elections, select candidates for the general election. *See* 25 P.S. § 2953. This statute has never been invoked as a means to supplant an entire primary election, and it is unclear whether it would apply here, where the

Indeed, both the Eastern District of Pennsylvania and the Third Circuit, considering requests for relief similar to the one raised by Plaintiffs here, have declined to enter injunctions out of concern that doing so would disrupt or delay the election. In *Pileggi v. Aichele*, 843 F. Supp. 2d 584 (E.D. Pa. 2012), the court addressed a federal court challenge to state legislative elections in a posture nearly identical to what Plaintiffs present here. In that case, the Pennsylvania Supreme Court had struck down the proposed 2011 state legislative map and left the 2001 map in place until a constitutional map could be created by the Legislative Reapportionment Commission. *Id.* at 588. A few days after the period for nominating petitions began – very nearly the same point in the election cycle as in this case – Speaker Turzai and Senator Pileggi, then Senate Majority Leader, sought a temporary restraining order and preliminary injunction against the use of the 2001 plan. *Id.* at 591. Judge Surrick denied the request for a TRO, explaining that "[a]t this late date, granting a temporary restraining order will not provide clarity, speed or certainty. In fact, it will accomplish just the opposite. Granting a temporary restraining order at this stage will delay the primary election and potentially disenfranchise Pennsylvania voters." *Id.* at 595.[13]

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primary can proceed as under the Current Plan. Moreover, invoking § 2953 as a basis for cancelling a primary would not be satisfactory to voters or to those candidates who are not selected.

[13]Indeed, Judge Surrick found the claim in *Pileggi* so lacking in substance that he dismissed the complaint without constituting a three-judge panel. *See id*. at 597

Similarly, in *Page v. Bartels*, the Third Circuit refused to enjoin the implementation of a redistricting plan adopted by New Jersey's Apportionment Commission where such judicial action would have likely delayed or suspended the legislative elections and required the State of New Jersey to hold two separate primaries and general elections for its state offices. 248 F.3d 175 (3d Cir. 2001). The Court recognized that "[f]ederal court intervention that would create such a disruption in the state electoral process is not to be taken lightly." *Id.* at 195-196.

The U.S. Supreme Court's ruling in *Purcell* is also highly instructive. There, the Court admonished the Ninth Circuit Court of Appeals for enjoining Arizona from enforcing state law on the eve of an election. *Purcell v. Gonzalez*, 549 U.S. 1, 3 (2006). The Court explained that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Id.* at 4-5.

Applying the principles of *Purcell*, federal courts faced with eleventh-hour requests to interfere in a state's election laws after the election process has begun overwhelmingly deny injunctive relief. *See, e.g.*, *Sw. Voter Registration Educ.*

("The injunctive relief that Plaintiffs request—intervention by this Court to stop Defendant from moving forward with the April 24, 2012 primary election process—is not a reasonable option. Plaintiffs, therefore, are not entitled to a three-judge panel.").

Project v. Shelley, 344 F.3d 914, 919 (9th Cir. 2003) (en banc) (noting that "election cases are different from ordinary injunction cases" because "[t]he public interest is significantly affected" and affirming denial of injunctive relief in consideration of the fact that "hardship [would] fall[] not only upon the putative defendant, the California Secretary of State, but on all the citizens of California"); *Colon–Marrero v. Conty–Perez*, 703 F.3d 134, 139 n.9 (1st Cir. 2012) (remarking that "even where plaintiff has demonstrated a likelihood of success, issuing an injunction on the eve of an election is an extraordinary remedy with risks of its own"); *Veasey v. Perry*, 769 F.3d 890, 895 (5th Cir. 2014) (en banc) (staying an injunction "in light of the importance of maintaining the status quo on the eve of an election").

Plaintiffs are undoubtedly familiar with this standard. Legislative Respondents and legislative intervenors repeatedly cited *Purcell* in the State Court Litigation in support of their unsuccessful efforts to stay the Pennsylvania Supreme Court's order instituting a remedy for the 2018 elections. *See* Legislative Respondents' first Application for Stay, No. 159 MM 2017 (Pa. Jan. 25, 2018) at 3, second Application for Stay, No. 17A795 (U.S. Jan. 26, 2018) at 18, 19, and

third Application for Stay, No. 17A909 (U.S. Feb. 27, 2018) at 32; Intervenors' Application for Stay, No. 17A802 (U.S. Jan. 26, 2018) at 2, 14, 19.[14]

Now that the procedures necessary to hold the election on May 15 as scheduled have begun, those considerations weigh strongly against injunctive relief. First, as the passage of time continues to bring the election date closer, any further change will prevent Defendants and other Commonwealth and local officials from completing the steps necessary to conduct an orderly primary on May 15. The passage of time likewise makes it increasingly difficult to ensure that voters and candidates are well informed and prepared for the election. Second, unlike the situation in the State Court Litigation, Pennsylvania voters now have the opportunity to participate in the 2018 congressional election under a plainly constitutional map. Neither Plaintiffs nor anyone else has raised any claim that the Current Plan itself is flawed. Rather, Plaintiffs have raised solely procedural issues regarding the Pennsylvania Supreme Court's actions in adopting the Current Plan.[15] Third, there is no contention in this case that any voter's right to vote will

[14] Ironically, Plaintiffs themselves cite *Purcell* in their brief in support of a preliminary injunction, drawing special attention to the Court's caution against "conflicting orders." Br. at 21 (*quoting Purcell*, 594 U.S. at 5). But there are no "conflicting orders" currently. Rather, it is Plaintiffs themselves who seek to create the very confusion *Purcell* argues against by asking this Court to issue an order in conflict with that issued by the Pennsylvania Supreme Court less than two weeks ago.

[15] The Complaint casts vague aspersions on the result of the state court's efforts, musing that the Current Plan "does not *appear* to comply with" certain criteria and

be imperiled by an election under the Current Plan.[16] And, indeed, legislators repeatedly claimed in earlier federal court litigation that voters do not even have standing to bring claims under the Elections Clause, the sole basis for Plaintiffs' claims here. *See, e.g.*, Legislative Defendants' Motion to Dismiss, Dkt. No. 108, at 3-4, *Agre v. Wolf*, No. 17-cv-4392 (E.D. Pa. 2017).

A stay at this late stage is particularly inappropriate in light of Plaintiffs' inexcusable delay in seeking an injunction. Nothing about Plaintiffs' claims is specific to the new map that was issued on February 19, and Plaintiffs have offered no reason for their failure to institute this challenge sooner. Plaintiffs cannot claim an injunction is necessary to prevent disorder and confusion while pursuing litigation that exponentially compounds the chaos they purport to fear.

"*appears* . . . to pack Republicans into as few districts as possible." Compl. ¶¶ 87-88 (emphasis added). But the Plaintiffs did not actually challenge the court's map on this basis or offer any evidence supporting such contentions, which would be the proper way to raise such concerns. *See Growe*, 507 U.S. at 36. That failure is telling, and strongly counsels this Court against giving such innuendo any serious weight.

[16] Plaintiffs raise a passing concern about compliance with UOCAVA and the votes of military personnel and overseas voters. Br. at 21-22. But the adoption of the Current Plan and the brief delay in completion of the nomination process associated with it have created no UOCAVA issues beyond those faced in a normal election cycle. Marks Aff. ¶¶ 53-69. If anything, it is Plaintiffs' requested relief – re-imposition of the 2011 Plan, resulting in yet further delay – that would complicate compliance with UOCAVA. Thus, Plaintiffs' vague references to UOCAVA do nothing to advance their claims.

The balance of the equities in this case is particularly stark. Defendants testified in the State Court Litigation – and have reiterated here – that the election can proceed as scheduled under the Current Plan. Marks Aff. ¶¶ 18-19; 26-52. But any further change to the map at this point will require the primary election to be postponed or cancelled. *Id.* ¶¶ 70-81. Thus, as the cases cited above make clear, Plaintiffs' burden is at its apex because their claims present this Court with a choice between allowing Pennsylvania's election to proceed as scheduled or requiring it to be cancelled or postponed. Even where the districts created by an apportionment plan have already been found unconstitutional – a circumstance that Plaintiffs have not even alleged here – the "disruption of the election process which might result from requiring precipitate changes" may counsel against immediate injunctive relief. *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

2. The Reinstatement of an Unconstitutional Plan Has Staggering Implications for Pennsylvania Citizens' Right to Vote

Pennsylvania voters have a fundamental interest in participating in fair elections under a valid districting map. While Intervenors, who are themselves Pennsylvania voters, may have more to say on this topic, a stay threatens to impose harm of constitutional dimensions by postponing or denying voters their rights under the state constitution as authoritatively determined by the Commonwealth's highest court. The harm voters would suffer if forced to proceed through a fourth

consecutive election cycle under a map that has been declared constitutionally invalid by the Pennsylvania Supreme Court is staggering. Courts regularly deny stays in redistricting cases precisely because they recognize that the practical effect of a stay is the perpetuation of a constitutional violation. *See, e.g., Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 560 (E.D. Va. 2016); *Larios v. Cox*, 305 F. Supp. 2d 1335, 1336, 1344 (N.D. Ga. 2004); *Vera v. Bush*, 933 F. Supp. 1341, 1348 (S.D. Tex. 1996).[17]

V. CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court deny Plaintiffs' request for relief.

Dated: March 2, 2018

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[17] Indeed, the relief Plaintiffs seek here is even more egregious. In the cases cited above, courts refused to grant a stay that would have the effect of *leaving* an unconstitutional map in place. Here, Plaintiffs ask this Court to affirmatively re-impose an unconstitutional map.

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CERTIFICATE OF WORD COUNT

I, Mark A. Aronchick, hereby certify pursuant to Local Civil Rule 7.8(b)(2) that the text of the foregoing Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction contains 7109 words as calculated by the word-count function of Microsoft Word, which is within the limit of 7500 words granted by the Court in response to Defendants' Motion for Leave to File Brief in Excess of the Word Limit.

Dated: March 2, 2018

/s/ Mark A. Aronchick
Mark A. Aronchick

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2018, I caused the foregoing Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction to be filed with the United States District Court for the Middle District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties of record.

/s/ Mark A. Aronchick
Mark A. Aronchick

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

JACOB CORMAN, in his official capacity as Majority Leader of the Pennsylvania Senate, MICHAEL FOLMER, in his official capacity as Chairman of the Pennsylvania Senate State Government Committee, LOU BARLETTA, RYAN COSTELLO, MIKE KELLY, TOM MARINO, SCOTT PERRY, KEITH ROTHFUS, LLOYD SMUCKER, and GLENN THOMPSON, Plaintiffs, v. ROBERT TORRES, in his official capacity as Acting Secretary of the Commonwealth; JONATHAN M. MARKS, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation, Defendants.	:	CIVIL ACTION No. 1:18-cv-00443-CCC-KAJ-JBS Three-Judge Panel Pursuant to 28 U.S.C. § 2284(a) Circuit Judge Kent Jordan Chief Judge Christopher Conner District Judge Jerome Simandle

[PROPOSED] ORDER DENYING DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION

AND NOW, this ___ day of _____, 2018, upon consideration of Plaintiffs' Motion for Preliminary Injunction, the Memorandum of Law in Support of the Motion, responses thereto, and arguments of counsel

IT IS **ORDERED** that the motion is **DENIED**.

BY THE COURT:

_____

J.

EXHIBIT A

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

JACOB CORMAN, in his official capacity as Majority Leader of the Pennsylvania Senate, MICHAEL FOLMER, in his official capacity as Chairman of the Pennsylvania Senate State Government Committee, LOU BARLETTA, RYAN COSTELLO, MIKE KELLY, TOM MARINO, SCOTT PERRY, KEITH ROTHFUS, LLOYD SMUCKER, and GLENN THOMPSON, Plaintiffs, v. ROBERT TORRES, in his official capacity as Acting Secretary of the Commonwealth; JONATHAN M. MARKS, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation, Defendants.	CIVIL ACTION No. 1:18-cv-00443-CCC-KAJ-JBS Three-Judge Panel Pursuant to 28 U.S.C. § 2284(a) Circuit Judge Jordan Chief Judge Conner Judge Jerome Simandle

AFFIDAVIT OF FRANK DERMODY

Frank Dermody, being duly sworn, deposes and says:

1. I am a member of the Pennsylvania House of Representatives (the "House").

2. The House is one of the two chambers of the Pennsylvania General Assembly (the "General Assembly").

3. I was first elected in 1990 as a member of the Pennsylvania House of Representatives in the 33rd House Legislative District representing parts of Allegheny and Westmoreland Counties. Throughout my tenure in the House, I served as chairman of the Subcommittee on Courts in the Judiciary Committee, chairman of the Allegheny County Democratic Delegation, chairman of the Urban Affairs Committee, Caucus Secretary and Caucus Whip. In 2010, I was elected as the House Democratic Leader and have held that position for eight years.

4. Democrats are the minority party in both chambers of the General Assembly. In the House, the Democratic Members currently hold 81 of the 203 House seats.

5. I have special expertise and familiarity with the rules and practices of the House because I have served in the House for 28 years holding various chairmanships and leadership positions in the Democratic Caucus.

6. I have followed the progress of *League of Women Voters v. Commonwealth of Pennsylvania* in the Pennsylvania Commonwealth Court and the Pennsylvania Supreme Court (the "State Court Lawsuit"), including the deadlines issued by the Pennsylvania Supreme Court for the General Assembly and the

Governor to enact a remedial congressional districting plan and the General Assembly's failure to meet the court mandated deadline.

7. The Petitioners in the State Court Lawsuit filed suit in June of 2017. As the lawsuit progressed, the Petitioners identified the following problems, as well as others, with the 2011 Plan: that its districts were oddly shaped and noncompact, that it unnecessarily split counties and smaller political subdivisions, that it maximized the political advantage of Republican voters and minimized the representational rights of Democratic voters, thereby shutting voters out of the political process, and that it had the effect of artificially increasing the number of Republicans in Pennsylvania's congressional delegation. *See* Verified Compl. ¶ 26; *id.*, Ex. F at 36-55; December 29, 2017, Recommended Findings of Fact and Conclusions of Law, attached as Exhibit 1, at FOF ¶¶ 221-234; 254-306, 309; 318-338; 355-359; 377-388; COL ¶¶ 58-60.

8. On November 9, 2017, the Pennsylvania Supreme Court issued an Order vacating the Commonwealth Court's stay of the State Court Lawsuit and ordering the Commonwealth Court to conduct fact-finding on an expedited schedule. *See* Verified Compl., Ex. A.

9. The November 9 Order put the General Assembly on notice that there was a possibility that the Pennsylvania Supreme Court would hold that the

redistricting map then in place (the "2011 Plan") was unconstitutional and order that a new map be enacted in time for the 2018 primary elections.

10. This development seemed more likely as the State Court Lawsuit progressed through discovery and trial. On December 29, the Commonwealth Court issued a 128-page report, finding, among other things, that the Petitioners had shown that the 2011 Plan was drafted with partisan intent. *See* Ex. 1.

11. On January 22, 2018, the Pennsylvania Supreme Court issued an order stating that, among other things, "should the Pennsylvania General Assembly choose to submit a congressional districting plan that satisfies the requirements of the Pennsylvania Constitution, it shall submit such plan for consideration by the Governor on or before February 9, 2018" – 18 days from the date of the Order. Verified Compl., Ex. B at 2.

12. The January 22 Order continued that "to comply with this Order, any congressional districting plan shall consist of: congressional districts composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population." *Id.* at 3.

13. Eighteen days is adequate time for the General Assembly to draft and pass a remedial congressional districting plan.

14. Complying with the requirements of Article III, Section 4 of the Pennsylvania Constitution, the General Assembly could pass legislation, including a districting plan, in as few as five days. *See* Pa. Const. art. III, sec. 4.

15. In 2011, the General Assembly moved Senate Bill 1249, which was the legislative vehicle for the 2011 Plan, through the legislative process within nine session days/sixteen calendar days. *See* Legislative History of Senate Bill 1249, attached as Exhibit 2; *see also* Ex. 1 at FOF ¶¶ 97-106.

16. First consideration of the 2011 Plan occurred in the Senate on December 7, 2011. *See* Ex. 2; Ex. 1 at FOF ¶ 100; *see also* S.B. 1249, P.N. 1520, attached as Exhibit 3.

17. During this time period, the Senate was in session on the following days: Wednesday, December 7, 2011, Monday, December 12, 2011, Tuesday, December 13, 2011, Wednesday, December 14, 2011 and Thursday, December 22, 2011. *See* Ex. 2.

18. Second consideration of Senate Bill 1249 occurred in the Senate on December 12, 2011. *See* Ex. 2; Ex. 1 at FOF ¶ 102.

19. On December 14, 2011, the legal descriptions of the boundaries of each congressional district were added to the bill by the Senate. *See* S.B. 1249, P.N. 1869, attached as Exhibit 4. The same day, the bill received third

consideration in the Senate and was sent to the House. *See* Ex. 2; Ex. 1 at FOF ¶¶ 104-105, 112.

20. During this time period, the House was in session on the following days: Wednesday, December 7, 2011, Monday, December 12, 2011, Tuesday, December 13, 2011, Wednesday, December 14, 2011, Thursday, December 15, 2011, Friday, December 16, 2011 (non-voting session) and Saturday, December 20, 2011. *See* Ex. 2.

21. Senate Bill 1249 received first consideration in the House on December 15, 2011, second consideration on December 19, 2011, and third consideration and final passage on December 20, 2011. *See* Ex. 2; Ex. 1 at FOF ¶¶ 113-117.

22. Senate Bill 1249 was signed in the House on December 20, 2011 and signed in the Senate on December 22, 2011. *See* Ex. 2; Ex. 1 at FOF ¶¶ 117, 121.

23. On January 29, 2018, Senate Bill 1034 was introduced in the Senate. *See* Legislative History of Senate Bill 1034, attached as Exhibit 5; *see also* S.B. 1034, P.N. 1441, attached as Exhibit 6. It was my understanding that this was intended to be the legislative vehicle for the remedial congressional districting plan.

24. The Senate had first consideration on Senate Bill 1034 on January 29, second consideration on January 30, and third consideration and final passage on January 31. *See* Ex. 5.

25. The bill then moved to the House, where it was reported to the State Government Committee on February 1, reported out of that committee on February 6, and given first consideration on February 6. *Id.*

26. It would have been possible to amend the bill to include the legal descriptions of the boundaries of each proposed congressional district, give the bill second and third consideration in the House, and pass the bill in the Senate by February 9 – allowing the General Assembly to comply with the Pennsylvania Supreme Court's February 9 deadline to submit a remedial congressional districting plan to the Governor for consideration.

27. The Legislative Data Processing Center generates legal descriptions of proposed congressional reapportionment plans and the Legislative Reference Bureau in turn drafts the legal descriptions as a bill or amendment. This technical process can be done well within a day.

28. The leaders of the Republican caucuses did not amend Senate Bill 1034 or schedule additional session days to pass a remedial congressional districting plan in compliance with the Pennsylvania Supreme Court's Order.

29. Instead, Speaker Turzai and President Pro Tem Scarnati submitted a map to the Pennsylvania Supreme Court on February 9, 2018 representing the collective preferences of the Republicans in the House and Senate. They never attempted to put this map to a vote in either chamber of the General Assembly, despite the fact that the Republicans hold a majority in both the House and Senate and the Republicans in the House and Senate agreed on a remedial map to present to the Court that could have been voted on by the General Assembly.

30. I never saw the Turzai/Scarnati Republican map until after it was filed with the Pennsylvania Supreme Court.

31. Even after the Republicans filed their map with the Pennsylvania Supreme Court, the General Assembly still had time to convene session and pass a remedial congressional districting plan to present to the Governor for his consideration on or before the February 15 deadline for his approval. However, no additional session days were scheduled.

32. The map drafted and filed by Turzai and Scarnati is not a remedial congressional districting plan submitted by the General Assembly.

Frank Dermody

Sworn to and subscribed before me

This 28th day of February, 2018

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Keisha C. Wright, Notary Public
City of Harrisburg, Dauphin County
My commission expires December 02, 2018

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

League of Women Voters of Pennsylvania, Carmen Febo San Miguel, James Solomon, John Greiner, John Capowski, Gretchen Brandt, Thomas Rentschler, Mary Elizabeth Lawn, Lisa Isaacs, Don Lancaster, Jordi Comas, Robert Smith, William Marx, Richard Mantell, Priscilla McNulty, Thomas Ulrich, Robert McKinstry, Mark Lichty, Lorraine Petrosky, Petitioners	:	
v.	:	No. 261 M.D. 2017
The Commonwealth of Pennsylvania; The Pennsylvania General Assembly; Thomas W. Wolf, In His Capacity As Governor of Pennsylvania; Michael J. Stack III, In His Capacity As Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate; Michael C. Turzai, In His Capacity As Speaker of the Pennsylvania House of Representatives; Joseph B. Scarnati III, In His Capacity As Pennsylvania Senate President Pro Tempore; Robert Torres, In His Capacity As Acting Secretary of the Commonwealth of Pennsylvania; Jonathan M. Marks, In His Capacity As Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State, Respondents	:	

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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I. INTRODUCTION

On June 15, 2017, Petitioners League of Women Voters of Pennsylvania (LWVP),[1] Carmen Febo San Miguel, James Solomon, John Greiner, John Capowski, Gretchen Brandt, Thomas Rentschler, Mary Elizabeth Lawn, Lisa Isaacs, Don Lancaster, Jordi Comas, Robert Smith, William Marx, Richard Mantell, Priscilla McNulty, Thomas Ulrich, Robert McKinstry,[2] Mark Lichty, and Lorraine Petrosky (collectively, Petitioners) commenced this action by filing a Petition for Review (Petition) addressed to this Court's original jurisdiction, challenging the constitutionality of the congressional redistricting plan set forth in Senate Bill 1249 of 2011, enacted into law on December 22, 2011, as Act 131 of 2011, and commonly known as the Congressional Redistricting Act of 2011 (2011 Plan).[3] Petitioners filed their Petition against the Commonwealth of Pennsylvania (Commonwealth);[4] the Pennsylvania General Assembly (General Assembly); Thomas W. Wolf (Governor Wolf), in his capacity as Governor of Pennsylvania; Pedro A. Cortes (Secretary Cortes),[5] in his capacity as Secretary of Pennsylvania; Jonathan M. Marks (Commissioner Marks), in his capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation for the

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[1] By Order dated November 13, 2017, this Court sustained preliminary objections challenging LWVP's standing in this matter and dismissed LWVP as a party petitioner.

[2] Although not identified in the caption as such, throughout the pleadings Robert McKinstry is referred to as "Robert McKinstry, Jr."

[3] Act of December 22, 2011, P.L. 599, 25 P.S. §§ 3596.101-.1510.

[4] This Court dismissed the Commonwealth from this matter by Order dated October 4, 2017.

[5] On November 16, 2017, Acting Secretary of the Commonwealth Robert Torres (Acting Secretary Torres) was substituted as a party for Secretary Cortes pursuant to Pennsylvania Rule of Appellate Procedure 502(c).

Pennsylvania Department of State; Michael J. Stack, III (Lt. Governor Stack), in his capacity as Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate; Michael C. Turzai (Speaker Turzai), in his capacity as Speaker of the Pennsylvania House of Representatives; and Joseph B. Scarnati, III (President Pro Tempore Scarnati), in his capacity as the Pennsylvania Senate President Pro Tempore (Speaker Turzai and President Pro Tempore Scarnati are hereinafter collectively referred to as "Legislative Respondents").[6]

The 2011 Plan divided Pennsylvania into 18 congressional districts based on the results of the 2010 U.S. Census. In Count I of their Petition, Petitioners allege that the 2011 Plan violates their rights to free expression and association under Article I, Sections 7 and 20 of the Pennsylvania Constitution. More specifically, Petitioners allege that the General Assembly created the 2011 Plan by "expressly and deliberately consider[ing] the political views, voting histories, and party affiliations of Petitioners and other Democratic voters" with the intent to burden and disfavor Petitioners' and other Democratic voters' rights to free expression and association. (Pet. at ¶¶ 105-06.) Petitioners further allege that the 2011 Plan had the effect of burdening and disfavoring Petitioners' and other Democratic voters' rights to free expression and association, because the 2011 Plan "has prevented Democratic voters from electing the representatives of their choice and from influencing the legislative process" and has suppressed "the political views and expression of Democratic voters." (Pet. at ¶ 107.) In Count II of their Petition, Petitioners allege that the 2011 Plan violates the equal

[6] By Order dated November 13, 2017, this Court permitted certain registered Republican voters and active members of the Republican Party to intervene in this matter (Intervenors).

protection provisions of Article I, Sections 1 and 26 of the Pennsylvania Constitution and the Free and Equal Elections Clause of Article I, Section 5 of the Pennsylvania Constitution. More specifically, Petitioners allege that the 2011 Plan intentionally discriminated against Petitioners and other Democratic voters by using "redistricting to maximize Republican seats in Congress and entrench [those] Republican members in power." (Pet. at ¶ 116.) Petitioners further allege that the 2011 Plan has an actual discriminatory effect, because it "disadvantages Petitioners and other Democratic voters at the polls and severely burdens their representational rights." (Pet. at ¶ 117.)

On August 9, 2017, the General Assembly and Legislative Respondents filed with this Court an application to stay all proceedings (Application to Stay), requesting that the entire matter be stayed pending the United States Supreme Court's forthcoming decision in *Gill v. Whitford* (U.S. Supreme Court, No. 16-1161, jurisdictional statement filed March 24, 2017, and argued October 3, 2017) (*Gill*).[7] The Honorable Dan Pellegrini (Senior Judge Pellegrini) heard oral argument on the Application to Stay on October 4, 2017. At the conclusion thereof, Senior Judge Pellegrini advised the parties that the case would be stayed. Thereafter, on October 16, 2017, Senior Judge Pellegrini issued an Order granting the Application to Stay, thereby staying all aspects of the case, except for briefing on the claims of legislative privilege, pending the United States Supreme Court's decision in *Gill*.

[7] *Gill* was originally captioned *Whitford v. Gill* at the district court level, but the caption was changed to *Gill v. Whitford* at the time of its appeal to the United States Supreme Court.

On October 11, 2017, Petitioners filed with the Pennsylvania Supreme Court an application for extraordinary relief under 42 Pa. C.S. § 726 and Pa. R.A.P. 3309 (Application for Extraordinary Relief), requesting that the Pennsylvania Supreme Court exercise its plenary jurisdiction and expedite resolution of this matter before the 2018 midterm elections. By Order dated November 9, 2017, the Pennsylvania Supreme Court granted Petitioners' Application for Extraordinary Relief. In so doing, the Pennsylvania Supreme Court directed, in pertinent part:

> Under the continuing supervision of [the Pennsylvania Supreme Court], the case is hereby remanded to the Commonwealth Court and directed to President Judge Mary Hannah Leavitt for assignment to a commissioned judge of the Commonwealth Court with instructions to conduct all necessary and appropriate discovery, pre-trial and trial proceedings so as to create an evidentiary record on which Petitioners' claims may be decided. The Commonwealth Court shall file with the Prothonotary of [the Pennsylvania Supreme Court] its findings of fact and conclusions of law no later than December 31, 2017.

(Pa. Supreme Ct. Order dated Nov. 9, 2017 at Docket No. 159 MM 2017 (Remand Order).) The President Judge of the Commonwealth Court assigned the matter to the undersigned to conduct all proceedings necessary to comply with the Remand Order.

Thereafter, this Court resolved pending preliminary objections and established a schedule to close the pleadings, conclude discovery, and proceed to trial. Up until the date of trial, the parties filed the following discovery and evidentiary-related motions, applications, and objections that required consideration by this Court:

> 1. On August 9, 2017, Legislative Respondents filed objections to Petitioners' notice of intent to serve subpoenas, asserting, *inter alia*,

that production of the information sought was protected by the Speech and Debate Clause of Article II, Section 15 of the Pennsylvania Constitution (Speech and Debate Clause).[8] By Memorandum and Order dated November 22, 2017, this Court: (1) quashed certain legislative subpoenas directed to current and/or former employees, legislative aides, consultants, experts, and agents of the General Assembly, noting that this Court lacked authority under the Speech and Debate Clause to compel production of the documents sought therein; and (2) struck paragraphs 1(g) and 1(e) of certain third-party subpoenas directed to the Republican National Committee, the National Republican Congressional Committee, the Republican State Leadership Committee (RSLC), the State Government Leadership Foundation, and 2 individuals based upon the Speech and Debate Clause. This Court noted further that it was not clear from the wording of the remaining categories of the third-party subpoenas whether any responsive documents would fall within the scope of the privilege protected by the Speech and Debate Clause, and, therefore, the remaining categories of the third-party subpoenas shall be interpreted as excluding those documents that reflect the intentions, motivations, and activities of state legislators and their staff with respect to the consideration and passage of the 2011 Plan.[9]

2. On August 28, 2017, Legislative Respondents filed objections to Petitioners' notice of intent to serve subpoena on Governor Thomas W. Corbett (Governor Corbett), asserting, *inter alia*, that production of the information sought was protected by the Speech and Debate Clause. By Memorandum and Order dated November 22, 2017, this Court concluded that while it was not clear from the wording of the

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[8] Article II, Section 15 of the Pennsylvania Constitution provides:

> The members of the General Assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

[9] In its November 22, 2017 Memorandum and Order, this Court also concluded that it lacked the authority to compel Legislative Respondents to produce documents or information in response to Petitioners' first set of requests for production and first set of interrogatories, because all of the topics set forth therein related to legitimate legislative activity protected by the Speech and Debate Clause.

Governor Corbett subpoena whether any responsive documents would fall within the scope of the privilege protected by the Speech and Debate Clause, the Governor Corbett subpoena shall be interpreted as excluding those documents that reflect the intentions, motivations, and activities of state legislators and their staff with respect to the consideration and passage of the 2011 Plan.[10]

3. On September 12, 2017, Petitioners filed a motion to strike Legislative Respondents' objections to Petitioners' notices of intent to serve subpoenas. While not expressly stated therein, this Court addressed Petitioners' motion to strike in its November 22, 2017 Memorandum and Order, addressing the legislative subpoenas, the third-party subpoenas, and the Governor Corbett subpoena.

4. On September 22, 2017, the General Assembly filed a motion to quash Petitioners' notice of deposition for a designee of the General Assembly and an application for a protective order regarding such notice of deposition. By Order dated November 21, 2017, this Court granted the motion to quash and denied as moot the application for a protective order.

5. On November 16, 2017, Petitioners filed an emergency application to compel responses to pending discovery requests based on the General Assembly's and Legislative Respondents' waiver of all privileges. By Order dated November 17, 2017, this Court denied Petitioners' emergency application.

6. On November 27, 2017, Petitioners filed an application to compel production of non-privileged documents from Legislative Respondents. By Order dated November 28, 2017, this Court granted Petitioners' application to compel with certain qualifications.

7. On December 3, 2017, Legislative Respondents filed an application to preclude introduction of privileged evidence otherwise obtained in the United States District Court for the Eastern District of

[10] On November 27, 2017, non-party Governor Corbett filed a motion to quash a subpoena directed to him by Petitioners. By Memorandum and Order dated November 30, 2017, this Court granted Governor Corbett's motion and quashed the subpoena on the basis that Governor Corbett is clothed in the chief executive privilege set forth in *Appeal of Hartranft*, 85 Pa. 433 (1877).

Pennsylvania case of *Agre v. Wolf*, No. 2:17-cv-4392 (*Agre* case).[11] By Order dated December 5, 2017, this Court denied Legislative Respondents' application, noting that this Court was not making a determination as to whether specific testimony or documents would be admissible at trial.

8. On December 6, 2017, Petitioners filed an application to exclude portions of the expert report of Dr. James Gimpel and to compel production of the underlying information set forth therein, which Legislative Respondents had previously withheld on the basis of privilege. By Order dated December 7, 2017, this Court denied Petitioners' application without prejudice to raise appropriate objections to Dr. Gimpel's testimony at trial or to cross-examine Dr. Gimpel on the bases for his opinions.

This Court conducted a non-jury trial on December 11-15, 2017. Prior to the start of testimony, this Court heard oral argument on the parties' motions *in limine*, 8 in all. Following oral argument, this Court: (1) granted Petitioners' motion *in limine* to exclude Intervenors' witness testimony, thereby (a) precluding the testimony of an existing congressional candidate, (b) limiting the number of witnesses who will testify as Republican Party chairs to 1, and (c) limiting the number of witnesses who will testify as "Republicans-at-large" to 1; (2) granted Petitioners' motion *in limine* to preclude Legislative Respondents from offering evidence or argument about their intentions, motivations, and activities in enacting the 2011 Plan to the extent that it sought to bar Legislative

[11] In *Agre v. Wolf*, the plaintiffs challenged the 2011 Plan as unconstitutional under the Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution and the First Amendment to the United States Constitution. As part of the discovery process in the *Agre* case, the Legislative Respondents filed motions for protective orders, seeking to invoke legislative privilege as a means to exclude any testimony or evidence relative to their deliberative process/subjective intent in the creation and passage of the 2011 Plan. The *Agre* court overruled such motions, concluding that under federal common law, the legislative and deliberative process privileges are qualified (not absolute) and there was no reason to protect any of the information from discovery.

Respondents from offering evidence that Petitioners could not obtain in discovery due to this Court's November 22, 2017 Order addressing the Speech and Debate Clause; (3) denied Petitioners' motion *in limine* to exclude testimony from Dr. Wendy K. Tam Cho regarding Petitioners' expert Dr. Jowei Chen; (4) denied Petitioners' motion *in limine* to exclude testimony from Dr. Gimpel regarding the intended or actual effect of the 2011 Plan on Pennsylvania's communities of interest, but accepted Legislative Respondents' proffer to withdraw pages 17 through 29 of Dr. Gimpel's report; and (5) denied Legislative Respondents' motion *in limine* to exclude documents and/or testimony regarding the Redistricting Majority Project (REDMAP). With respect to Legislative Respondents' motion *in limine* to exclude Petitioners' Exhibits 27-31, 33, and 135-161, Legislative Respondents' motion *in limine* to exclude certain testimony of Dr. Chen, and Petitioners' motion *in limine* to admit evidence produced by Speaker Turzai in the *Agre* case and properly obtained by Petitioners, this Court held that it would only allow the parties to use any documents filed of record in the *Agre* case, any documents admitted into evidence at trial in the *Agre* case, and any documents relied upon by experts in the *Agre* case to the same extent the experts used them in the *Agre* case.

During trial, Petitioners called the following witnesses: (1) Petitioner William Marx; (2) Petitioner Mary Elizabeth Lawn; (3) Jowei Chen, Ph.D.; (4) John J. Kennedy, Ph.D.; (5) Petitioner Thomas Rentschler; (6) Wesley Pegden, Ph.D.; and (7) Christopher Warshaw, Ph.D. Petitioners also designated portions of the depositions or prior trial testimony of the following witnesses and introduced them into the record as exhibits upon stipulation of the parties: (1) Petitioner Carmen Febo San Miguel; (2) Petitioner Don Lancaster; (3) Petitioner Gretchen

Brandt; (4) Petitioner John Capowski; (5) Petitioner Jordi Comas; (6) Petitioner John Greiner; (7) Petitioner James Solomon; (8) Petitioner Lisa Isaacs; (9) Petitioner Lorraine Petrosky; (10) Petitioner Mark Lichty; (11) Petitioner Priscilla McNulty; (12) Petitioner Richard Mantell; (13) Petitioner Robert McKinstry, Jr.; (14) Petitioner Robert Smith; (15) Petitioner Thomas Ulrich; (16) State Senator Andrew E. Dinniman; and (17) State Representative Gregory Vitali. Legislative Respondents called the following witnesses: (1) Wendy K. Tam Cho, Ph.D.; and (2) Nolan McCarty, Ph.D. In addition, Governor Wolf, Acting Secretary Torres, and Commissioner Marks produced an affidavit from Commissioner Marks, which the Court admitted into the record as an exhibit by stipulation of the parties. Lt. Governor Stack also produced an affidavit, which the Court admitted into the record as an exhibit by stipulation of the parties. Finally, Intervenors produced affidavits from the following individuals, which the Court admitted into the record as exhibits by stipulation of the parties: (1) Intervenor Thomas Whitehead; and (2) Intervenor Carol Lynne Ryan.

This Court admitted a number of exhibits into evidence at trial without objection or upon stipulation of the parties, all of which are identified on Exhibit "A" hereto. The parties entered certain joint exhibits into evidence based upon stipulation, all of which are identified on Exhibit "B" hereto.

This Court also admitted certain exhibits into evidence over objection: (1) Petitioners' Exhibit 1, Expert Report of Jowei Chen, Ph.D.; (2) Petitioners' Exhibit 21, Figure - Base 1 (2008-2010): Simulation Set 1: 234 Simulated Plans Following Only Traditional Districting Criteria (No Incumbent Protection) and Containing One District with Black Voting Age Population (VAP) over 50%; (3) Petitioners' Exhibit 23, Figure - Base 2

(2008-2010): Simulation Set 2: 300 Simulated Plans Following Traditional Districting Criteria and Protecting 17 Incumbents Containing One District with Black VAP over 50% (Figure 11, Base 1 of Chen Report); (4) Legislative Respondents' Exhibit 39, "Evaluating partisan gains from Congressional gerrymandering: Using computer simulations to estimate the effect of gerrymandering in the U.S. House" (Figure 11, Base 2 of Chen Report); and (5) Lt. Governor Stack's Exhibit 9, Chen Figure 1 Map (detailed) with Residences of Incumbent Congressmen Marked, for illustrative purposes only.

This Court also sustained objections to the admissibility of a number of exhibits but entered them into the record under seal for the limited purpose of allowing the Pennsylvania Supreme Court to review the Court's evidentiary ruling on the admissibility of such exhibits: (1) Petitioners' Exhibit 124, Declaration of Stacie Goede, Republican State Leadership Conference; (2) Petitioners' Exhibit 126, "Redistricting 2010 Preparing for Success;" (3) Petitioners' Exhibit 127, "RSLC Announces Redistricting Majority Project (REDMAP);" (4) Petitioners' Exhibit 128, "REDistricting Majority Project;" (5) Petitioners' Exhibit 129, "REDMAP Political Report: July 2010;" (6) Petitioners' Exhibit 131, 2012 REDMAP Summary Report; (7) Petitioners' Exhibit 132, REDMAP Political Report: Final Report; (8) Petitioners' Exhibit 133, 2012: RSLC Year In Review; (9) Petitioners' Exhibit 134, REDMAP Pennsylvania fundraising letter; and (10) Petitioners' Exhibit 140, Map - "CD18 Maximized." (N.T., 1061, 1070-71.) This Court did not consider these exhibits in preparing its recommended findings of fact and conclusions of law.

Although the Pennsylvania Supreme Court has tasked this Court with preparing recommended findings of fact and conclusions of law based upon the

evidentiary record created by the parties, this Court's paramount responsibility in this matter is to create an evidentiary record upon which the Pennsylvania Supreme Court can render its decision. As such, this Court has exercised discretion in favor of admitting testimony and evidence over objection whenever possible. Moreover, Petitioners and Legislative Respondents, in their post-trial filings, advocated, in some form or another, for a change in existing Pennsylvania precedent. This Court has not considered those requests, adhering instead to what the Court understands is the current state of Pennsylvania law.

II. RECOMMENDED FINDINGS OF FACT[12]

A. Parties

1. *Petitioners*

1. Petitioner Carmen Febo San Miguel (Febo San Miguel) is registered to vote at her residence in Philadelphia, Pennsylvania, in the 1st Congressional District. Febo San Miguel is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13;[13] Petitioners' Ex. 163 (P-163) at 2-3, 5-6.)

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[12] The Court acknowledges that some of the paragraphs in this portion of the recommended findings of fact and conclusions of law can reasonably be characterized not as findings of facts, but as conclusions of law. They are, nonetheless, included in this section as a matter of order and clarity.

[13] The parties filed a Joint Stipulation of Facts with this Court on December 8, 2017. The factual stipulations set forth therein are incorporated into these Recommended Findings of Fact and Conclusions of Law in their entirety. The stipulations have been reordered, reworded, combined, and/or separated when appropriate.

2. Petitioner James Solomon (Solomon) is registered to vote at his residence in Philadelphia, Pennsylvania, in the 2nd Congressional District. Solomon is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 169 (P-169) at 2, 4.)

3. Petitioner John Greiner (Greiner) is registered to vote at his residence in Erie, Pennsylvania, in the 3rd Congressional District. Greiner is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 168 (P-168) at 2-3, 5.)

4. Petitioner John Capowski (Capowski) is registered to vote at his residence in Camp Hill, Pennsylvania, in the 4th Congressional District. Capowski is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 166 (P-166) at 2-3, 6.)

5. Petitioner Gretchen Brandt (Brandt) is registered to vote at her residence in State College, Pennsylvania, in the 5th Congressional District. Brandt is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 165 (P-165) at 2-4, 6.)

6. Petitioner Thomas Rentschler (Rentschler) is registered to vote at his residence in Exeter Township, Pennsylvania, in the 6th Congressional District. Rentschler is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; N.T. 668-73.)

7. Petitioner Mary Elizabeth Lawn (Lawn) is registered to vote at her residence in Chester, Pennsylvania, in the 7th Congressional District. Prior to the 2011 Plan, Lawn resided in the 1st Congressional District. Lawn is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; N.T. at 134, 136-39.)

8. Petitioner Lisa Isaacs (Isaacs) is registered to vote at her residence in Morrisville, Pennsylvania, in the 8th Congressional District. Isaacs is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 170 (P-170) at 2-5, 10.)

9. Petitioner Don Lancaster (Lancaster) is registered to vote at his residence in Indiana, Pennsylvania, in the 9th Congressional District. Lancaster is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 164 (P-164) at 2-3.)

10. Petitioner Jordi Comas (Comas) is registered to vote at his residence in Lewisburg, Pennsylvania, in the 10th Congressional District. Comas is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 167 (P-167) at 2, 6-7.)

11. Petitioner Robert Smith (R. Smith) is registered to vote at his residence in Bear Creek, Pennsylvania, in the 11th Congressional District. R. Smith is a registered Democrat, who has consistently voted for Democratic

candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 176 (P-176) at 2-3.)

12. Petitioner William Marx (Marx) is registered to vote at his residence in Delmont, Pennsylvania, in the 12th Congressional District. Marx is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; N.T. at 102-03, 105, 108, 111.)

13. Petitioner Richard Mantell (Mantell) is registered to vote at his residence in Jenkintown, Pennsylvania, in the 13th Congressional District. Mantell is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 174 (P-174) at 2-3.)

14. Petitioner Priscilla McNulty (McNulty) is registered to vote at her residence in Pittsburgh, Pennsylvania, in the 14th Congressional District. McNulty is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 173 (P-173) at 4, 6, 8, 32.)

15. Petitioner Thomas Ulrich (Ulrich) is registered to vote at his residence in Bethlehem, Pennsylvania, in the 15th Congressional District. Ulrich is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 177 (P-177) at 2-3.)

16. Petitioner Robert McKinstry, Jr. (McKinstry) is registered to vote at his residence in Kennett Square, Pennsylvania, in the 16th Congressional District. McKinstry is a registered Democrat, who has consistently voted for

Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 175 (P-175) at 2-3, 8.)

17. Petitioner Mark Lichty (Lichty) is registered to vote at his residence in East Stroudsburg, Pennsylvania, in the 17th Congressional District. Lichty is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 172 (P-172) at 2, 5.)

18. Petitioner Lorraine Petrosky (Petrosky) is registered to vote at her residence in Latrobe, Pennsylvania, in the 18th Congressional District. Petrosky is a registered Democrat, who has consistently voted for Democratic candidates for the United States House of Representatives. (Joint Stip. of Facts at ¶¶ 12-13; Petitioners' Ex. 171 (P-171) at 4, 6, 8-9, 39.)

19. Three congressional general elections occurred under the 2011 Plan before Petitioners filed their Petition. (Joint Stip. of Facts at ¶ 14.)

20. Petitioners were residents of Pennsylvania when the 2011 Plan became law. (Joint Stip. of Facts at ¶ 15.)

21. Petitioners did not file any type of challenge pertaining to the 2011 Plan prior to the filing of their Petition. (Joint Stip. of Facts at ¶ 16.)

22. No Petitioner has been prevented from registering to vote in Pennsylvania since the 2011 Plan became law. (Joint Stip. of Facts at ¶ 17.)

23. Since the 2011 Plan was enacted, Petitioners have voted in every congressional general election where there was a Democratic candidate on the ballot. (Joint Stip. of Facts at ¶ 18.)

24. Petitioners have each voted for the Democratic congressional candidate in each of the last 3 congressional general elections to the extent that one was running for the seat. (Joint Stip. of Facts at ¶ 19.)

25. No Petitioners have been prohibited from speaking in opposition to the views and/or actions of their Congressperson since the 2011 Plan became law. (Joint Stip. of Facts at ¶ 20.)

26. No Petitioners have been told by any congressional office that constituent services are provided or denied on the basis of partisan affiliations since the 2011 Plan became law. (Joint Stip. of Facts at ¶ 21.)

2. *Respondents*

27. The General Assembly is the state legislature for Pennsylvania and is composed of the Pennsylvania Senate (PA Senate) and the Pennsylvania House of Representatives (PA House). The General Assembly convenes in the Pennsylvania State Capitol Building located in Harrisburg, Pennsylvania. (Joint Stip. of Facts at ¶ 22.)

28. Governor Wolf is the Governor of Pennsylvania and is sued in his official capacity. (Joint Stip. of Facts at ¶ 23.)

29. One of the Governor's official duties is signing or vetoing bills passed by the General Assembly. All Pennsylvania Governors, including Governor Wolf, are charged with, among other things, faithfully executing valid laws enacted by the General Assembly. (Joint Stip. of Facts at ¶ 24.)

30. Governor Wolf was elected Governor of Pennsylvania in November 2014 and assumed office on January 20, 2015. (Joint Stip. of Facts at ¶ 25.)

31. Governor Wolf did not hold public office at the time that Senate Bill 1249 (SB 1249) was drafted and the 2011 Plan was enacted. (Joint Stip. of Facts at ¶ 26.)

32. Acting Secretary Torres is the Acting Secretary of Pennsylvania and is sued in his official capacity. (Joint Stip. of Facts at ¶ 27.)

33. Commissioner Marks is the Commissioner of the Bureau of Commissions, Elections, and Legislation (Bureau) for the Pennsylvania Department of State (DOS) and is sued in his official capacity. Commissioner Marks was appointed to the position of Commissioner in October 2011. Commissioner Marks is responsible for overseeing the day-to-day operations of the Bureau, which includes election administration. (Joint Stip. of Facts at ¶ 28; Governor Wolf, Acting Secretary Torres, and Commissioner Marks' Ex. 2 (EBD-2) at ¶¶ 1-2, 6.)

34. Commissioner Marks has been with the Bureau since the Fall of 2002. From 2004 through 2008, Commissioner Marks served as the Chief of the Division of Elections. From 2008 through 2011, Commissioner Marks served as the Chief of the Division of the Statewide Uniform Registry of Electors. (EBD-2 at ¶¶ 3-5.)

35. Commissioner Marks has supervised the administration of DOS's duties in more than 20 regularly scheduled elections and a number of special elections. (EBD-2 at ¶ 7.)

36. Lt. Governor Stack is the Lieutenant Governor of Pennsylvania and serves as President of the PA Senate. Lt. Governor Stack is sued in his official capacity. (Joint Stip. of Facts at ¶ 30.)

37. Lt. Governor Stack served in the PA Senate as the Senator for the 5th Senatorial district from 2001 until 2015, when he was sworn in as the Lieutenant Governor of Pennsylvania. (Joint Stip. of Facts at ¶ 157.)

38. Speaker Turzai is the Speaker of the PA House and is sued in his official capacity. (Joint Stip. of Facts at ¶ 31.)

39. Speaker Turzai is a Republican. (Joint Stip. of Facts at ¶ 32.)

40. Speaker Turzai has represented Pennsylvania's 28th legislative district since 2001. (Joint Stip. of Facts at ¶ 33.)

41. Speaker Turzai was elected Speaker of the PA House on January 6, 2015, and previously served as Majority Leader for the PA House Republican Caucus from 2011 to 2014. (Joint Stip. of Facts at ¶ 34.)

42. President Pro Tempore Scarnati is the PA Senate President Pro Tempore and is sued in his official capacity. (Joint Stip. of Facts at ¶ 35.)

43. President Pro Tempore Scarnati is a Republican. (Joint Stip. of Facts at ¶ 36.)

44. President Pro Tempore Scarnati was elected President Pro Tempore of the PA Senate in 2006. (Joint Stip. of Facts at ¶ 37.)

3. *Intervenors*

45. Intervenors are registered Republican voters in each of Pennsylvania's 18 congressional districts. Intervenors include announced or potential candidates for United States Congress, county party committee chairpersons, and active Republicans. (Joint Stip. of Facts at ¶¶ 159, 196-98.)

46. Intervenor Brian McCann (McCann) is a registered Republican voter, who resides in Philadelphia County in the 1st Congressional District.

McCann is a Committee member for Philadelphia's 65th Ward and the Ward Leader for Philadelphia's 57th Ward. (Joint Stip. of Facts at ¶ 160.)

47. Intervenor Daphne Goggins (Goggins) is a registered Republican voter, who resides in Philadelphia County in the 2nd Congressional District. Goggins is a Committee member for the Philadelphia City Committee, who currently serves as the Republican Ward Leader for Philadelphia's 16th Ward. (Joint Stip. of Facts at ¶ 161.)

48. Intervenor Carl Edward Pfeifer, Jr. (Pfeifer) is a registered Republican voter, who resides in Montgomery County in the 2nd Congressional District. Pfeifer is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 162.)

49. Intervenor Michael Baker (Baker) is a registered Republican voter, who resides in Armstrong County in the 3rd Congressional District. Baker is the Chairman of the Armstrong County Republican Committee. (Joint Stip. of Facts at ¶ 163.)

50. Intervenor Cynthia Ann Robbins (Robbins) is a registered Republican voter, who resides in Mercer County in the 3rd Congressional District. Robbins is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 164.)

51. Intervenor Ginny Steese Richardson (Richardson) is a registered Republican voter, who resides in Mercer County in the 3rd Congressional District. Richardson is the Chairwoman for the Mercer County Republican Party and a former candidate for public office. (Joint Stip. of Facts at ¶ 165.)

52. Intervenor Carol Lynne Ryan (Ryan) is a registered Republican voter, who resides in Lawrence County in the 3rd Congressional District. Ryan is a

member of the Lawrence County Republican Party Committee. (Joint Stip. of Facts at ¶ 166; Intervenors' Ex. 17 (I-17) at ¶ 1.)

53. Intervenor Joel Sears (Sears) is a registered Republican voter, who resides in York County in the 4th Congressional District. Sears is a member of the York County Republican Party Committee. (Joint Stip. of Facts at ¶ 167.)

54. Intervenor Kurtes D. Smith (K. Smith) is a registered Republican voter, who resides in Clinton County in the 5th Congressional District. K. Smith is the Chairman of the Clinton County Republican Party. (Joint Stip. of Facts at ¶ 168.)

55. Intervenor C. Arnold McClure (McClure) is a registered Republican voter, who resides in Huntingdon County in the 5th Congressional District. McClure is the Chairman of the Huntingdon County Republican Party. (Joint Stip. of Facts at ¶ 169.)

56. Intervenor Karen C. Cahilly (Cahilly) is a registered Republican voter, who resides in Potter County in the 5th Congressional District. Cahilly is the Chairwoman of the Potter County Republican Party. (Joint Stip. of Facts at ¶ 170.)

57. Intervenor Vicki Lightcap (Lightcap) is a registered Republican voter, who resides in Montgomery County in the 6th Congressional District. Lightcap is a member of the Montgomery County Republican Party Committee and has been a candidate for public office. (Joint Stip. of Facts at ¶ 171.)

58. Intervenor Wayne Buckwalter (Buckwalter) is a registered Republican voter, who resides in Chester County in the 6th Congressional District. Buckwalter is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 172.)

59. Intervenor Ann Marshall Pilgreen (Pilgreen) is a registered Republican voter, who resides in Montgomery County in the 7th Congressional District. Pilgreen is a member of the Montgomery County Republican Party Committee. (Joint Stip. of Facts at ¶ 173.)

60. Intervenor Ralph E. Wike (Wike) is a registered Republican voter, who resides in Delaware County in the 7th Congressional District. Wike is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 174.)

61. Intervenor Martin C.D. Morgis (Morgis) is a registered Republican voter, who resides in Bucks County in the 8th Congressional District. Morgis is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 175.)

62. Intervenor Richard J. Tems (Tems) is a registered Republican voter, who resides in Bucks County in the 8th Congressional District. Tems is a member of the Bucks County Republican Party Committee and previously served on the Doylestown Borough Republican Committee. (Joint Stip. of Facts at ¶ 176.)

63. Intervenor James Taylor (Taylor) is a registered Republican voter, who resides in Franklin County in the 9th Congressional District. Taylor is a member of the Franklin County Republican Party and previously served as Chairman for the Franklin County Republican Party. (Joint Stip. of Facts at ¶ 177.)

64. Intervenor Lisa V. Nancollas (Nancollas) is a registered Republican voter, who resides in Mifflin County in the 10th Congressional District. Nancollas has been a candidate for public office. (Joint Stip. of Facts at ¶ 178.)

65. Intervenor Hugh H. Sides (Sides) is a registered Republican voter, who resides in Lycoming County in the 10th Congressional District. Sides is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 179.)

66. Intervenor Mark J. Harris (Harris) is a registered Republican voter, who resides in Snyder County in the 10th Congressional District. Harris is a former Chairman of the Snyder County Republican Party, who continues to remain active in Republican campaign activities. (Joint Stip. of Facts at ¶ 180.)

67. Intervenor William P. Eggleston (Eggleston) is a registered Republican voter, who resides in Wyoming County in the 11th Congressional District. Eggleston is the Vice Chair of the Wyoming County Republican Party and a former candidate for public office, who continues to remain active in Republican campaign activities. (Joint Stip. of Facts at ¶ 181.)

68. Intervenor Jacqueline D. Kulback (Kulback) is a registered Republican voter, who resides in Cambria County in the 12th Congressional District. Kulback currently serves as the County Chairwoman of the Cambria County Republican Party. (Joint Stip. of Facts at ¶ 182.)

69. Intervenor Timothy D. Cifelli (Cifelli) is a registered Republican voter, who resides in Philadelphia County in the 13th Congressional District. Cifelli is an appointed member of the Philadelphia County Republican Party Committee. (Joint Stip. of Facts at ¶ 183.)

70. Intervenor Ann M. Dugan (Dugan) is a registered Republican voter, who resides in Allegheny County in the 14th Congressional District. Dugan is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 184.)

71. Intervenor Patricia J. Felix (Felix) is a registered Republican voter, who resides in Northampton County in the 15th Congressional District. Felix has been a registered Republican since 1980 after initially registering as a Democrat. Felix is a member of the Northampton County Republican Party Committee. (Joint Stip. of Facts at ¶ 185.)

72. Intervenor Scott C. Uehlinger (Uehlinger) is a registered Republican voter, who resides in Berks County in the 15th Congressional District. Uehlinger is a candidate for the 15th Congressional District. (Joint Stip. of Facts at ¶ 186.)

73. Intervenor Brandon Robert Smith (B. Smith) is a registered Republican voter, who resides in Lancaster County in the 16th Congressional District. B. Smith is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 187.)

74. Intervenor Glen Beiler (Beiler) is a registered Republican voter, who resides in Lancaster County in the 16th Congressional District. Beiler is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 188.)

75. Intervenor Tegwyn Hughes (Hughes) is a registered Republican voter, who resides in Northampton County in the 17th Congressional District. Hughes is a Committee member from Washington Township for the Northampton County Republican Party. (Joint Stip. of Facts at ¶ 189.)

76. Intervenor Thomas Whitehead (Whitehead) is a registered Republican voter, who resides in Monroe County in the 17th Congressional District. Whitehead is the Chairman for the Monroe County Republican Committee and an active member of the Republican Party. (Joint Stip. of Facts at ¶ 190; Intervenors' Ex. 16 (I-16) at ¶¶ 1-2.)

77. Intervenor David Moylan (Moylan) is a registered Republican voter, who resides in Schuylkill County in the 17th Congressional District. Moylan was a former congressional candidate for the 17th Congressional District and a potential congressional candidate in future elections. (Joint Stip. of Facts at ¶ 191.)

78. Intervenor James R. Means, Jr. (Means) is a registered Republican voter, who resides in Allegheny County in the 18th Congressional District. Means is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 192.)

79. Intervenor Barry O. Christenson (Christenson) is a registered Republican voter, who resides in Allegheny County in the 18th Congressional District. Christenson has been a candidate for public office. (Joint Stip. of Facts at ¶ 193.)

80. Intervenor Kathleen Bowman (Bowman) is a registered Republican voter, who resides in the 4th Congressional District. Bowman is an active member of the Republican Party. (Joint Stip. of Facts at ¶ 194.)

81. Intervenor Bryan Leib (Leib) is a registered Republican voter, who resides in the 1st Congressional District. Leib is an active member of the Republican Party and a potential candidate for the 1st Congressional District. (Joint Stip. of Facts at ¶ 195.)

B. Background

82. Article I, Section 2 of the United States Constitution leaves the states' legislatures primarily responsible for the apportionment of their federal congressional districts. *See Growe v. Emison*, 507 U.S. 25, 34 (1993).

83. Following the national census that is mandated every 10 years, each state is responsible for drawing its congressional districts based upon how many districts the United States Department of Commerce assigns the state relative to such state's population. (Joint Stip. of Facts at ¶ 1.)

84. The decision to award a particular state a certain number of seats is known as apportionment. (Joint Stip. of Facts at ¶ 2.)

85. Congressional seats were reapportioned after the 2010 U.S. Census. (Joint Stip. of Facts at ¶ 3.)

86. As a result of reapportionment in 2010, Pennsylvania lost 1 congressional seat, dropping from 19 to 18 seats. (Joint Stip. of Facts at ¶ 4.)

87. In creating the 2011 Plan, it was mathematically impossible to avoid pairing 2 incumbents unless 1 or more incumbent Congressmen/women declined to seek re-election. (Joint Stip. of Facts at ¶ 5.)

88. In Pennsylvania, the boundaries for congressional districts are redrawn by legislative action in the form of a bill that proceeds through both chambers of the General Assembly and is signed into law by the Governor. (Joint Stip. of Facts at ¶ 6.)

89. In the year prior to the November 2010 elections, a majority of the Representatives of the PA House were Democrats. (Joint Stip. of Facts at ¶ 153.)

90. In 2011, the year after the November 2010 elections, a majority of the Representatives of the PA House were Republicans. (Joint Stip. of Facts at ¶¶ 8, 154.)

91. In 2011, a majority of the Senators in the PA Senate were Republicans. (Joint Stip. of Facts at ¶ 7.)

92. Governor Corbett, a Republican, was Pennsylvania's Governor in 2011. (Joint Stip. of Facts at ¶ 9.)

93. The Pennsylvania Manual[14] contains a description of each of Pennsylvania's congressional districts for the congressional district maps adopted between 1960 and 2011. Pennsylvania's congressional district maps for 1943, 1951, 1962, 1972, 1982, 1992, 2002, and 2011, which are from the Pennsylvania Manual, are set out in Joint Exhibit 26. (Joint Stip. of Facts at ¶¶ 88-89.)

94. True and accurate lists of the members of the United States House of Representatives for each congressional district from 2005 to the present are set forth in Joint Exhibit 25. (Joint Stip. of Facts at ¶ 67.)

95. The following table accurately depicts the partisan distribution of seats in Pennsylvania's congressional delegation from 1966 to 2010, though some members may have been elected on some party label other than Democrat or Republican:

Year	Districts	Democratic Seats	Republican Seats
1966	27	14	13
1968	27	14	13
1970	27	14	13
1972	25	13	12
1974	25	14	11
1976	25	17	8
1978	25	15	10
1980	25	12[15]	12
1982	23	13	10

[14] The Pennsylvania Manual is a regularly published book issued by the Pennsylvania Department of General Services, a public authority. (Joint Stip. of Facts at ¶ 88.)

[15] One elected representative, Thomas M. Foglietta, was not elected as either a Democrat or Republican in 1980. (Joint Stip. of Facts at ¶ 70 n.1.)

1984	23	13	10
1986	23	12	11
1988	23	12	11
1990	23	11	12
1992	21	11	10
1994	21	11	10
1996	21	11	10
1998	21	11	10
2000	21	10	11
2002	19	7	12
2004	19	7	12
2006	19	11	8
2008	19	12	7
2010	19	7	12

(Joint Stip. of Facts at ¶ 70.)

96. The following chart contains the home addresses for each of the 17 current Pennsylvania members of the United States House of Representatives:

1	Bob Brady	7028 Brentwood Rd Philadelphia, PA 19151
2	Dwight Evans	1600 Cardeza St Philadelphia, PA 19150
3	Mike Kelly	239 W Pearl St Butler, PA 16001
4	Scott Perry	155 Warrington Rd Dillsburg, PA 17019
5	Glenn Thompson	8351 Pondview Dr McKean, PA 16426
6	Ryan Costello	107 Yorktown Rd Collegeville, PA 19426
7	Pat Meehan	102 Harvey Ln Chadds Ford, PA 19317
8	Brian Fitzpatrick	19 Spinythorn Rd Levittown, PA 19056

9	Bill Shuster	455 Overlook Dr Hollidaysburg, PA 16648
10	Tom Marino	358 Kinley Dr Cogan Station, PA 17728
11	Lou Barletta	1529 Terrace Blvd Hazleton, PA 18201
12	Keith Rothfus	227 Walnut St Sewickley, PA 15143
13	Brandon Boyle	13109 Bustleton Ave Philadelphia, PA 19116
14	Mike Doyle	205 Hawthorne Ct Pittsburgh, PA 15221
15	Charlie Dent	3626 Evening Star Terrace Allentown, PA 18104
16	Lloyd Smucker	230 Deerfield Dr Lancaster, PA 17602
17	Matthew Cartwright	8 Steinbeck Dr Moosic, PA 18507
18	Vacant Due to Resignation	

(Joint Stip. of Facts at ¶ 155.)

C. Enactment of the 2011 Plan

97. The PA House and PA Senate State Government Committees held hearings on May 11, June 9, and June 14, 2011, to receive testimony and public comment on redistricting. No congressional district map or draft of a congressional district map was presented at the hearings. (Joint Stip. of Facts at ¶ 38.)

98. On September 14, 2011, SB 1249 was introduced in the PA Senate in the form of Joint Exhibit 1. (Joint Stip. of Facts at ¶ 39.)

99. SB 1249's primary sponsors were Majority Floor Leader Dominic F. Pileggi (Majority Floor Leader Pileggi), President Pro Tempore Scarnati, and Senator Charles T. McIlhenney Jr. (Senator McIlhenney). Majority

Floor Leader Pileggi and Senator McIlhenney are Republicans. (Joint Stip. of Facts at ¶ 40.)

100. The PA Senate's first consideration of SB 1249 took place on December 7, 2011. (Joint Stip. of Facts at ¶ 41.)

101. The original version of SB 1249, Printer's Number (PN) 1520, did not provide any information about the boundaries of the congressional districts. Rather, for each of the 18 congressional districts, SB 1249, PN 1520 stated: "The [Number] District is composed of a portion of this Commonwealth." (Joint Stip. of Facts at ¶ 42.)

102. The PA Senate's second consideration of SB 1249 took place on December 12, 2011. (Joint Stip. of Facts at ¶ 43.)

103. During the second consideration, SB 1249 contained no map showing the proposed congressional districts. Rather, each of the 18 congressional districts were described as follows: "The [Number] District is composed of a portion of this Commonwealth." (Joint Stip. of Facts at ¶ 44.)

104. On December 14, 2011, SB 1249 was amended in the PA Senate State Government Committee and reported out as PN 1862 in the form of Joint Exhibit 2. (Joint Stip. of Facts at ¶ 45.)

105. On December 14, 2011, SB 1249 was referred to the PA Senate Appropriations Committee, where it was rewritten and reported out as PN 1869 in the form of Joint Exhibit 3. (Joint Stip. of Facts at ¶ 46.)

106. PN 1862 and PN 1869 were the only versions of SB 1249 that contained details of the boundaries of each congressional district. (Joint Stip. of Facts at ¶ 47.)

107. Upon stipulation and agreement of the parties, this Court takes judicial notice of the legislative history of SB 1249/Act 2011-131, including the Legislative Journals available at http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2011&sind=0&body=S&type=B&bn=1249. (Joint Stip. of Facts at ¶ 48.)

108. Democratic Senator Jay Costa introduced an amendment to SB 1249 that he stated would create 8 congressional districts favorable to Republicans, 4 congressional districts favorable to Democrats, and 6 swing congressional districts. The amendment did not pass. (Joint Stip. of Facts at ¶ 49.)

109. On December 14, 2011, SB 1249 passed in the PA Senate by a vote of 26-24. (Joint Stip. of Facts at ¶ 50.)

110. No Democratic Senator voted for SB 1249. (Joint Stip. of Facts at ¶ 51.)

111. As a Democratic Senator, Lt. Governor Stack voted against SB 1249. Based upon his experience as Lieutenant Governor of Pennsylvania and as chair of the Local Government Advisory Committee, Lt. Governor Stack believes that it is beneficial, when possible, to keep individual counties and municipalities in a single congressional district. (Joint Stip. of Facts at ¶ 158; Lt. Governor Stack Ex. 11.)

112. On December 14, 2011, SB 1249 was referred to the PA House State Government Committee. (Joint Stip. of Facts at ¶ 52.)

113. The PA House's first consideration of SB 1249 took place on December 15, 2011. (Joint Stip. of Facts at ¶ 53.)

114. The PA House's second consideration of SB 1249 took place on December 19, 2011. (Joint Stip. of Facts at ¶ 54.)

115. On December 19, 2011, the PA House referred SB 1249 to the PA House Appropriations Committee. (Joint Stip. of Facts at ¶ 55.)

116. On December 20, 2011, the PA House Appropriations Committee reported out SB 1249 in the form of Joint Exhibit 4. (Joint Stip. of Facts at ¶ 56.)

117. On December 20, 2011, SB 1249 passed in the PA House by a vote of 136-61. (Joint Stip. of Facts at ¶ 57.)

118. Thirty-six PA House Democrats voted for SB 1249. (Joint Stip. of Facts at ¶ 58.)

119. At least 33 of the 36 (approximately 92%) PA House Democrats who voted for SB 1249 represented state legislative districts that were part of at least 1 of the following congressional districts under the 2011 Plan: the 1st, 2nd, 13th, 14th, or 17th. (Joint Stip. of Facts at ¶ 59.)

120. Eighteen PA House Democrats from the Philadelphia area voted in favor of SB 1249. (Joint Stip. of Facts at ¶ 129.)

121. On December 22, 2011, the PA Senate signed SB 1249, after it was passed in the PA House, and then-Governor Corbett signed SB 1249 into law. (Joint Stip. of Facts at ¶ 60.)

122. When SB 1249 was enacted into law, it became Act 2011-131, also known as the 2011 Plan. (Joint Stip. of Facts at ¶ 61.)

123. The 2011 Plan remains in effect today. (Joint Stip. of Facts at ¶ 62.)

124. Neither Acting Secretary Torres nor Commissioner Marks had any role in the drafting or enactment of SB 1249. (Joint Stip. of Facts at ¶ 29.)

125. State Senator Andrew Dinniman (Senator Dinniman) is a Democratic member of the PA Senate. Senator Dinniman represents Chester County and is a member of the PA Senate State Government Committee. (Petitioners' Ex. 178 (P-178) at 17-19.)

126. Senator Dinniman testified[16] consistently with the facts set forth above in this Section II.C., regarding the PA Senate's involvement in the enactment of the 2011 Plan. Senator Dinniman also testified as follows:

a. Senator Dinniman does not ever recall a situation where a "shell bill" was presented to a committee for a vote, prior to the introduction of SB 1249. (P-178 at 19-20, 56-57.)

b. The minority members of the PA Senate State Government Committee, including Senator Dinniman, did not see SB 1249 as amended to include the descriptions of the congressional districts until the morning of December 14, 2011. (P-178 at 20-21, 48.)

c. On December 14, 2011, the PA Senate rule that requires a minimum of 6 hours between the time that a bill comes out of appropriations and is considered on the floor of the PA Senate was suspended for SB 1249. (P-178 at 23.)

d. On December 14, 2011, the PA Senate rule that requires sessions to end at 11:00 p.m. was suspended for SB 1249. (P-178 at 25, 76.)

e. It is unusual for a bill involving suffrage to proceed through the PA Senate in such a rapid manner—*i.e.*, introduced with a

[16] Excerpts of Senator Dinniman's testimony from the *Agre* case were admitted into evidence as Petitioners' Exhibit 178.

description of the congressional districts in the morning and adopted by the PA Senate after 11:00 p.m. that same day. Senator Dinniman believes that any bill dealing with suffrage should be considered in a deliberative manner, and that it was unfair for him to have to vote on a bill involving suffrage within such a short period of time. (P-178 at 27-28, 44-45.)

f. Because SB 1249 did not contain descriptions of the congressional districts until the morning of December 14, 2011, there was no opportunity for advocacy groups to respond to SB 1249. (P-178 at 30.)

g. Because SB 1249 did not contain descriptions of the congressional districts until the morning of December 14, 2011, Senator Dinniman was denied the opportunity to determine how his constituents felt about SB 1249. (P-178 at 30.)

h. In late November or early December 2011, Senator Dinniman expressed concern about the status of SB 1249 to the Chairman of the PA Senate State Government Committee. (P-178 at 31-32, 34-35.)

i. The PA Senate State Government Committee has the capacity to use voting data in a very different and more sophisticated manner than the past. (P-178 at 40, 75-76.)

j. Senator Dinniman believes that incumbency protection factored into SB 1249. (P-178 at 73-74.)

127. State Representative Gregory Vitale (Representative Vitale) is a Democratic member of the PA House, who represents the 166th legislative district. From 1993 through 2003, Representative Vitale served on the PA House State Government Committee. (Petitioners' Ex. 179 (P-179) at 2-3.)

128. Representative Vitale testified[17] consistently with the facts set forth above in Section II.C., regarding the PA House's involvement in the enactment of the 2011 Plan. Representative Vitale also testified as follows:

a. The discussions regarding SB 1249 and the creation of the congressional districts were held "behind closed doors." (P-179 at 9-10, 16, 25.)

b. Representative Vitale believed that the 2011 Plan was the result of an agreement between the PA House Republicans, the PA Senate Republicans, and the then-Governor. (P-179 at 9-10.)

c. There were no public opportunities to participate in the drafting of SB 1249. (P-179 at 11.)

d. Representative Vitale believes that it is clear that the 2011 Plan was drawn to maximize the number of Republican congressional seats. (P-179 at 16-17.)

e. It was unique that SB 1249 was introduced as a "shell," with no content. Representative Vitale explained that, even with controversial bills, the initial version of the bill has some content and then the "behind-the-scenes" deal is inserted into the bill at the last second. Representative Vitale explained that with SB 1249, it was the same bill without any content, rather than a different bill where something was added at the last second. (P-179 at 18, 31-32.)

[17] The Court admitted into evidence as Petitioners' Exhibit 179 excerpts of Representative Vitale's deposition taken on December 4, 2017.

f. As a citizen and voter of the 7th Congressional District, Representative Vitale believes that the 7th Congressional District is an embarrassment. (P-179 at 21-22.)

g. Representative Vitale believes that the 7th Congressional District was created by computer-generated lines with the intent to find all Republican precincts to make the congressional seat competitive. (P-179 at 35.)

D. The 2011 Plan Congressional Districts

129. The 2011 Plan, which is depicted in Joint Exhibit 5, officially establishes the boundaries of Pennsylvania's congressional districts. (Joint Stip. of Facts at ¶¶ 63-64.)

130. The 1st Congressional District, which is depicted in Joint Exhibit 6, is composed of parts of Delaware and Philadelphia Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(1) of the 2011 Plan.

131. The 2nd Congressional District, which is depicted in Joint Exhibit 7, is composed of parts of Montgomery and Philadelphia Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(2) of the 2011 Plan.

132. The 3rd Congressional District, which is depicted in Joint Exhibit 8, is composed of all of Armstrong, Butler, and Mercer Counties and parts of Clarion, Crawford, Erie, and Lawrence Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(3) of the 2011 Plan.

133. The 4th Congressional District, which is depicted in Joint Exhibit 9, is composed of all of Adams and York Counties and parts of Cumberland and Dauphin Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(4) of the 2011 Plan.

134. The 5th Congressional District, which is depicted in Joint Exhibit 10, is composed of all of Cameron, Centre, Clearfield, Clinton, Elk, Forest, Jefferson, McKean, Potter, Venango, and Warren Counties and parts of Clarion, Crawford, Erie, Huntingdon, and Tioga Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(5) of the 2011 Plan.

135. The 6th Congressional District, which is depicted in Joint Exhibit 11, is composed of parts of Berks, Chester, Lebanon, and Montgomery Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(6) of the 2011 Plan.

136. The 7th Congressional District, which is depicted in Joint Exhibit 12, is composed of parts of Berks, Chester, Delaware, Lancaster, and Montgomery Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(7) of the 2011 Plan.

137. The evolution of the shapes of the 7th Congressional District from 1953 to 2013 is depicted in Joint Exhibit 24. (Joint Stip. of Facts at ¶ 66; N.T. at 614-15.)

138. The 8th Congressional District, which is depicted in Joint Exhibit 13, is composed of all of Bucks County and part of Montgomery County. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(8) of the 2011 Plan.

139. The 9th Congressional District, which is depicted in Joint Exhibit 14, is composed of all of Bedford, Blair, Fayette, Franklin, Fulton, and Indiana Counties and parts of Cambria, Greene, Huntingdon, Somerset, Washington, and Westmoreland Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(9) of the 2011 Plan.

140. The 10th Congressional District, which is depicted in Joint Exhibit 15, is composed of all of Bradford, Juniata, Lycoming, Mifflin, Pike,

Snyder, Sullivan, Susquehanna, Union, and Wayne Counties and parts of Lackawanna, Monroe, Northumberland, Perry, and Tioga Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(10) of the 2011 Plan.

141. The 11th Congressional District, which is depicted in Joint Exhibit 16, is composed of all of Columbia, Montour, and Wyoming Counties and parts of Carbon, Cumberland, Dauphin, Luzerne, Northumberland, and Perry Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(11) of the 2011 Plan.

142. The 12th Congressional District, which is depicted in Joint Exhibit 17, is composed of all of Beaver County and parts of Allegheny, Cambria, Lawrence, Somerset, and Westmoreland Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(12) of the 2011 Plan.

143. The 13th Congressional District, which is depicted in Joint Exhibit 18, is composed of parts of Montgomery and Philadelphia Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(13) of the 2011 Plan.

144. The 14th Congressional District, which is depicted in Joint Exhibit 19, is composed of parts of Allegheny and Westmoreland Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(14) of the 2011 Plan.

145. The 15th Congressional District, which is depicted in Joint Exhibit 20, is composed of all of Lehigh County and parts of Berks, Dauphin, Lebanon, and Northampton Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(15) of the 2011 Plan.

146. The 16th Congressional District, which is depicted in Joint Exhibit 21, is composed of parts of Berks, Chester, and Lancaster Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(16) of the 2011 Plan.

147. The 17th Congressional District, which is depicted in Joint Exhibit 22, is composed of all of Schuylkill County and parts of Carbon, Lackawanna, Luzerne, Monroe, and Northampton Counties, including Scranton, Wilkes-Barre, and Easton. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(17) of the 2011 Plan.

148. The 18th Congressional District, which is depicted in Joint Exhibit 23, is composed of parts of Allegheny, Greene, Washington, and Westmoreland Counties. (Joint Stip. of Facts at ¶ 65.) *See* Section 301(18) of the 2011 Plan.

149. The 2011 Plan splits 28 counties between at least 2 different congressional districts. The following table accurately depicts those 28 split counties:

Count	Split Counties	Number of Districts Falling Within
1	Allegheny	3
2	Berks	4
3	Cambria	2
4	Carbon	2
5	Chester	3
6	Clarion	2
7	Crawford	2
8	Cumberland	2
9	Dauphin	3
10	Delaware	2
11	Erie	2
12	Greene	2
13	Huntingdon	2
14	Lackawanna	2
15	Lancaster	2
16	Lawrence	2
17	Lebanon	2
18	Luzerne	2

19	Monroe	2
20	Montgomery	5
21	Northampton	2
22	Northumberland	2
23	Perry	2
24	Philadelphia	3
25	Somerset	2
26	Tioga	2
27	Washington	2
28	Westmoreland	4

(Joint Stip. of Facts at ¶ 90.)

150. Until 1992, there were no municipalities split into separate congressional districts at the census block level. In the 1992 Pennsylvania congressional district map, there were 3 municipalities split into separate congressional districts at the census block level. (Joint Stip. of Facts at ¶ 103.)

151. The 2011 Plan splits 68 out of Pennsylvania's 2,561 municipalities (2.66%) between at least 2 different congressional districts. The following table accurately depicts the 68 split municipalities:

Count	Split Municipalities
1	Archbald
2	Barr
3	Bethlehem
4	Caln
5	Carbondale
6	Chester
7	Cumru
8	Darby
9	East Bradford
10	East Carroll
11	East Norriton
12	Fallowfield
13	Glenolden
14	Harrisburg
15	Harrison

16	Hatfield
17	Hereford
18	Horsham
19	Kennett
20	Laureldale
21	Lebanon
22	Lower Alsace
23	Lower Gwynedd
24	Lower Merion
25	Mechanicsburg
26	Millcreek
27	Monroeville
28	Morgan
29	Muhlenberg
30	North Lebanon
31	Northern Cambria
32	Olyphant
33	Penn
34	Pennsbury
35	Perkiomen
36	Philadelphia
37	Piney
38	Plainfield
39	Plymouth Township
40	Ridley
41	Riverside
42	Robinson
43	Sadsbury
44	Seven Springs
45	Shippen
46	Shippensburg
47	Shirley
48	Spring
49	Springfield
50	Stroud
51	Susquehanna
52	Throop
53	Tinicum
54	Trafford

55	Upper Allen
56	Upper Darby
57	Upper Dublin
58	Upper Gwynedd
59	Upper Hanover
60	Upper Merion
61	Upper Nazareth
62	West Bradford
63	West Hanover
64	West Norriton
65	Whitehall
66	Whitemarsh
67	Whitpain
68	Wyomissing

The municipalities of Seven Springs, Shippensburg, and Trafford are naturally split across counties. (Joint Stip. of Facts at ¶¶ 91, 121.)

152. Under the 2011 Plan, 11 of Pennsylvania's 18 congressional districts contain more than 3 counties that are divided into separate districts. (Joint Stip. of Facts at ¶ 92.)

153. The 2011 Plan splits Montgomery County (population 799,814) into 5 congressional districts. (Joint Stip. of Facts at ¶ 93.)

154. The 2011 Plan splits Westmoreland County (population 365,169) into 4 congressional districts. (Joint Stip. of Facts at ¶ 95.)

155. The 2011 Plan splits the city of Monroeville into 3 different congressional districts: the 12th, 14th, and 18th. (Joint Stip. of Facts at ¶ 96.)

156. The 2011 Plan splits the municipality of Caln Township into 3 different congressional districts: the 6th, 7th, and 16th. (Joint Stip. of Facts at ¶ 97.)

157. The 2011 Plan splits the municipality of Cumru Township into 3 different congressional districts: the 6th, 7th, and 16th. Cumru Township is a naturally non-contiguous municipality. (Joint Stip. of Facts at ¶ 98.)

158. The 2011 Plan splits the municipality of Spring Township into 3 different congressional districts: the 6th, 7th, and 16th. (Joint Stip. of Facts at ¶ 99.)

159. From at least 1962 until the 2002 congressional district map, all of Berks County lied within a single district. (Joint Stip. of Facts at ¶ 104.)

160. Under the 2011 Plan, Berks County (population 411,442) is split into 4 congressional districts: the 6th, 7th, 15th, and 16th. (Joint Stip. of Facts at ¶¶ 94, 105.)

161. Under the 2011 Plan, the City of Reading is located in the 16th Congressional District, separate from other parts of Berks County. (Joint Stip. of Facts at ¶ 106.)

162. Under the 2011 Plan, Dauphin County is split into 3 congressional districts: the 4th, 11th, and 15th. (Joint Stip. of Facts at ¶ 107.)

163. Under the 2011 Plan, the City of Harrisburg is divided between the 4th and 11th Congressional Districts. (Joint Stip. of Facts at ¶ 108.)

164. Two divisions of Harrisburg's 1st Ward are located in the 11th Congressional District, while the rest of Harrisburg is located in the 4th Congressional District. (Joint Stip. of Facts at ¶ 118.)

165. The 2011 Plan splits Northampton County. (Joint Stip. of Facts at ¶ 109.)

166. Under the 2011 Plan, Easton is located in the 17th Congressional District and split from the rest of Northampton County, which is located in the 15th Congressional District. (Joint Stip. of Facts at ¶ 115.)

167. Under the 2011 Plan, parts of the City of Chester, all of Swarthmore, and parts of Philadelphia are all located in the 1st Congressional District. (Joint Stip. of Facts at ¶ 110.)

168. In the 2011 Plan, the City of Chester is divided between the 1st Congressional District and the 7th Congressional District. (Joint Stip. of Facts at ¶ 116.)

169. Under the 2011 Plan, Coatesville is located in the 16th Congressional District and split from other parts of Chester County. (Joint Stip. of Facts at ¶ 111.)

170. Under the 2011 Plan, Wilkes-Barre is located in the 17th Congressional District and split from other parts of Luzerne County. (Joint Stip. of Facts at ¶ 112.)

171. From at least 1966 until the 2002 congressional district map, the 11th Congressional District incorporated both Scranton and Wilkes-Barre. (Joint Stip. of Facts at ¶ 119.)

172. From at least 1931 until the 2011 Plan, Erie County was not split between congressional districts. (Joint Stip. of Facts at ¶ 113.)

173. Under the 2011 Plan, Erie County is split between 2 congressional districts. (Joint Stip. of Facts at ¶ 113.)

174. Under the 2011 Plan, the City of Bethlehem is divided between the 15th Congressional District and the 17th Congressional District. (Joint Stip. of Facts at ¶ 114.)

175. Four census blocks in a single ward of the City of Bethlehem are contained in a different congressional district in the 2011 Plan. (Joint Stip. of Facts at ¶ 120.)

176. The 2011 Plan keeps Armstrong, Butler, Mercer, Venango, and Warren Counties whole. Such counties were split in Pennsylvania's 2002 congressional district map. (Joint Stip. of Facts at ¶ 117.)

177. The 2011 Plan paired 2 incumbents in a single district, Democratic Congressman Mark Critz (Critz) and Jason Altmire (Altmire). No other incumbents were paired. (Joint Stip. of Facts at ¶ 122.)

178. Under the prior congressional districting plan, Critz had been in the 12th Congressional District and Altmire had been in the 4th Congressional District. (Joint Stip. of Facts at ¶ 123.)

179. In the 2012 election cycle, Critz defeated Altmire in the Democratic primary. (Joint Stip. of Facts at ¶ 124.)

180. In the 2012 election cycle, Critz lost to Republican Keith Rothfus (Rothfus) in the general election. (Joint Stip. of Facts at ¶ 125.)

181. Rothfus has won re-election in the 12th Congressional District in every election since 2012. (Joint Stip. of Facts at ¶ 126.)

E. Pennsylvania Election Results[18]

182. The following chart represents the 17 largest counties in Pennsylvania by population and which of those counties voted Democratic in the 2008, 2012, and 2016 Presidential elections:

[18] The election returns that Acting Secretary Torres and Commissioner Marks produced in response to Petitioners' first set of requests for production are true and correct. (Joint Stip. of Facts at ¶ 69.)

County by Population	County	2008	2012	2016
1.	Philadelphia	X	X	X
2.	Allegheny	X	X	X
3.	Montgomery	X	X	X
4.	Bucks	X	X	X
5.	Delaware	X	X	X
6.	Lancaster			
7.	Chester	X		X
8.	York			
9.	Berks	X		
10.	Westmoreland			
11.	Lehigh	X	X	X
12.	Luzerne	X	X	
13.	Northampton	X	X	
14.	Erie	X	X	
15.	Dauphin	X	X	X
16.	Cumberland			
17.	Lackawanna	X	X	X

(Joint Stip. of Facts at ¶ 68.)

183. In the 2012 congressional elections, Democrats won 50.8% of the two-party statewide congressional vote. (Joint Stip. of Facts at ¶ 71.)

184. In the 2012 congressional elections, Republicans won 13 of the 18 congressional seats. Democrats won 5 congressional seats. (Joint Stip. of Facts at ¶ 72.)

185. In the 2012 congressional elections, each party's share of the two-party vote in the congressional districts the party won were as follows:

District	Democratic Vote	Republican Vote
1	84.9%	
2	90.5%	
13	69.1%	
14	76.9%	
17	60.3%	
3		57.2%
4		63.4%
5		62.9%
6		57.1%
7		59.4%
8		56.6%
9		61.7%
10		65.6%
11		58.5%
12		51.7%
15		56.8%
16		58.4%
18		64.0%
Average of Districts Won by Party	**76.4%**	**59.5%**
Statewide Vote Share	**50.8%**	**49.2%**

(Joint Stip. of Facts at ¶ 73.)

186. The following table shows the Democratic two-party vote share for each of Pennsylvania's congressional districts in 2012:

District	Democratic Vote Share
10	34.4%
18	36.0%
4	36.6%
5	37.1%
9	38.3%
7	40.6%
11	41.5%
16	41.6%
3	42.8%
6	42.9%
15	43.2%
8	43.4%
12	48.3%
17	60.3%
13	69.1%
14	76.9%
1	84.9%
2	90.5%
Mean	**50.5%**
Median	**42.8%**

(Joint Stip. of Facts at ¶ 86.)

187. In the 2012 congressional election, the mean Democratic two-party vote share across all districts was 50.46%. The median Democratic two-party vote share was 42.81% (the average of the 6th and 3rd Congressional Districts, which were Democrats' 9th and 10th best districts). (Joint Stip. of Facts at ¶ 87.)

188. In the 2014 congressional elections, Republicans won 55.5% of the two-party statewide congressional vote. (Joint Stip. of Facts at ¶ 74.)

189. In the 2014 congressional elections, Republicans won 13 of the 18 congressional seats. Democrats won 5 congressional seats. (Joint Stip. of Facts at ¶ 75.)

190. In the 2014 congressional elections, the elections in the 14th, 15th, and 18th Congressional Districts were uncontested. (Joint Stip. of Facts at ¶ 76.)

191. In the 2014 congressional elections, there was no Democratic challenger in the 15th and 18th Congressional Districts. (Joint Stip. of Facts at ¶ 77.)

192. In the 2014 contested congressional elections, each party's share of the two-party vote in the districts the party won were as follows:

District	Democratic Vote	Republican Vote
1	82.8%	
2	87.7%	
13	67.1%	
14	100%	
17	56.8%	
3		60.6%
4		74.5%
5		63.6%
6		56.3%
7		62.0%
8		61.9%
9		63.5%
10		71.6%
11		66.3%
12		59.3%
15		100%
16		57.7%
18		100%
Average of Contested Districts Won by Party	**73.6%**	**63.4%**
Statewide Vote Share	**44.5%**	**55.5%**

(Joint Stip. of Facts at ¶ 78.)

193. In 2014, the average two-party vote share for successful Democratic congressional candidates was 73.6%, as compared to 63.4% for successful Republican congressional candidates (excluding uncontested elections). (Joint Stip. of Facts at ¶ 79.)

194. In the 2016 congressional elections, Republicans won 54.1% of the two-party statewide congressional vote. (Joint Stip. of Facts at ¶ 80.)

195. In the 2016 congressional elections, Republicans won 13 of the 18 congressional seats. Democrats won 5 congressional seats. (Joint Stip. of Facts at ¶ 81.)

196. In the 2016 congressional elections, the elections in the 3rd, 13th, and 18th Congressional Districts were uncontested. (Joint Stip. of Facts at ¶ 83.)

197. In the 2016 congressional elections, there was no Democratic challenger in the 3rd and 18th Congressional Districts. (Joint Stip. of Facts at ¶ 84.)

198. In the 2016 congressional elections, each party's share of the two-party vote in the districts the party won were as follows:

District	Democratic Vote	Republican Vote
1	82.2%	
2	90.2%	
13	100.0%	
14	74.4%	
17	53.8%	
3		100.0%
4		66.1%
5		67.2%
6		57.2%
7		59.5%
8		54.4%
9		63.3%

District	Democratic Vote	Republican Vote
10		70.2%
11		63.7%
12		61.8%
15		60.6%
16		55.6%
18		100.0%
Average of Contested Districts Won by Party	**75.2%**	**61.8%**
Statewide Vote Share	**45.9%**	**54.1%**

(Joint Stip. of Facts at ¶ 82.)

199. In 2016, the average two-party vote share for successful Democratic congressional candidates was 75.2%, as compared to 61.8% for successful Republican congressional candidates (excluding uncontested elections). (Joint Stip. of Facts at ¶ 85.)

200. In the 3 election cycles that have taken place since the last redistricting in Pennsylvania, Democrats have won 5 of the 18 congressional seats. (Joint Stip. of Facts at ¶ 100.)

201. In each of the 3 congressional elections that have taken place under the 2011 Plan, Republican candidates have won the same 13 districts. (Joint Stip. of Facts at ¶ 101.)

202. The following table depicts the partisan distribution of congressional seats in Pennsylvania's congressional delegation from 2012-2016:

Year	Districts	Democratic Seats	Republican Seats	Democratic Vote Percentage	Republican Vote Percentage
2012	18	5	13	50.8%	49.2%
2014	18	5	13	44.5%	55.5%
2016	18	5	13	45.9%	54.1%

The vote percentages are based on the two-party share of the votes cast. (Joint Stip. of Facts at ¶ 102.)

203. In the 2016 elections, the 6th and 7th Congressional Districts re-elected Republican Congressmen while voting for Democratic nominee Hillary Clinton, former Secretary of State (Secretary Clinton) for President. (Joint Stip. of Facts at ¶¶127, 206.)

204. In the 2016 elections, the 17th Congressional District re-elected a Democratic Congressman while voting for Donald Trump for President. (Joint Stip. of Facts at ¶ 128.)

F. Pennsylvania Voting Patterns

205. By the November 2016 election, 24 Pennsylvania counties had more registered Democrats than registered Republicans, while 43 Pennsylvania counties had more registered Republicans than registered Democrats. (Joint Stip. of Facts at ¶ 203.)

206. Overall, from November 2012 to November 2016, percentages of registered Republicans increased in 59 Pennsylvania counties, while percentages of registered Republicans decreased in 8 Pennsylvania counties. (Joint Stip. of Facts at ¶ 204.)

207. From November 2012 to November 2016, percentages of registered Democrats increased in 5 Pennsylvania counties, while percentages of

registered Democrats decreased in 62 Pennsylvania counties. (Joint Stip. of Facts at ¶ 205.)

208. Twenty-four Pennsylvania counties had more registered Democrats than registered Republicans at the time of the 2016 Presidential Election. Secretary Clinton won 11 Pennsylvania counties in the 2016 Presidential Election. (Joint Stip. of Facts at ¶ 206.)

209. Three Pennsylvania counties that President Obama won in 2012 voted for President Trump in 2016: Erie County, Northampton County, and Luzerne County. (Joint Stip. of Facts at ¶ 207.)

210. President Trump won Erie County by 48.57% to Secretary Clinton's 46.99%. Registered Democrats outnumbered registered Republicans by 51.31% to 35.48% in Erie County in November 2016. (Joint Stip. of Facts at ¶ 208.)

211. President Trump won Northampton County by 49.98% to Secretary Clinton's 46.18%. Registered Democrats outnumbered registered Republicans by 46.87% to 34.76% in Northampton County in November 2016. (Joint Stip. of Facts at ¶ 209.)

212. President Trump won Luzerne County by 58.29% to Secretary Clinton's 38.86%. Registered Democrats outnumbered registered Republicans by 52.62% to 36.10% in Luzerne County in November 2016. (Joint Stip. of Facts at ¶ 210.)

213. President Trump's performance in Luzerne County improved by 11.42 percentage points over the 2012 Republican nominee, Mitt Romney, who won 46.87% of the vote in Luzerne County. (Joint Stip. of Facts at ¶ 211.)

214. In November 2016, Fayette County had 57.96% registered Democrats. President Trump won 64.33% of the vote in Fayette County. (Joint Stip. of Facts at ¶ 212.)

215. In November 2016, Greene County had 55.22% registered Democrats. President Trump won 68.82% of the vote in Greene County. (Joint Stip. of Facts at ¶ 213.)

216. In November 2016, Cambria County had 52.25% registered Democrats. President Trump won 67% of the vote in Cambria County. (Joint Stip. of Facts at ¶ 214.)

217. In November 2016, Beaver County had 52.15% registered Democrats. President Trump won 57.64% of the vote in Beaver County. (Joint Stip. of Facts at ¶ 215.)

218. In 2016, President Trump won Pennsylvania, Republican Pat Toomey was re-elected to the United States Senate, and Democratic candidates won statewide races for Attorney General, Treasurer, and Auditor General. (Joint Stip. of Facts at ¶ 216.)

219. In 2016, not all registered Democrats in Pennsylvania voted straight Democratic. (Joint Stip. of Facts at ¶ 217.)

220. In 2016, at least some voters voted Republican for President and United States Senate while voting Democratic for other statewide officers. (Joint Stip. of Facts at ¶ 218.)

G. Petitioners' Beliefs Regarding How the 2011 Plan Has Affected Their Ability to Influence the Political Process

221. Some Petitioners believe that the 2011 Plan has taken away their ability to vote for a candidate that has a chance of winning the election for their congressional districts. (N.T. at 113, 140, 674; P-166 at 8; P-177 at 12.)

222. Some Petitioners believe that the 2011 Plan lessens the power, strength, impact, and/or weight of their vote. (P-163 at 2, 4, 7-10, 13, 15; P-170 at 7, 15-16, 18; P-174 at 7-8.)

223. At least one of Petitioners believes that his vote does not count under the 2011 Plan. (P-164 at 11.)

224. At least one of Petitioners believes that the 2011 Plan prevents him from having a meaningful effect on who is elected in his congressional district. (P-167 at 19.)

225. Some Petitioners believe that the 2011 Plan has taken away their ability to express themselves and/or to have their voices effectively heard about issues that are important to them. (N.T. at 113-14, 125, 680-81; P-164 at 5-6; P-167 at 20; P-169 at 4-6, 8-9; P-173 at 66; P-175 at 16-17; P-177 at 6.)

226. Some Petitioners believe that under the 2011 Plan, they do not have a Congressman that fairly/adequately represents them and their points of view/interests. (N.T. at 117-18, 141-43, 675-77; P-165 at 8-9; P-166 at 6-7, 12; P-168 at 10-11; P-170 at 14-15; P-177 at 10-11.)

227. Some Petitioners believe that under the 2011 Plan, they do not have access to their Congressman and/or are unable to communicate with their Congressman because their Congressman makes himself unavailable—*e.g.*, they are unable to reach their Congressman at his offices, their Congressman does not hold town halls, and their Congressman is nonresponsive to inquiries. (N.T. at 116-17, 130, 143-46, 148; P-164 at 7; P-165 at 9-10; P-167 at 7, 10-12; P-176 at 4-5, 8.)

228. Some Petitioners believe that under the 2011 Plan, their current Congressman has no reason to listen to their concerns about issues that are

important to them because their Congressman does not need their votes to be re-elected. (N.T. at 118, 126, 146; P-164 at 5, 8; P-165 at 9; P-176 at 7, 10-11; P-177 at 15.)

229. Some Petitioners believe that the congressional districts created by the 2011 Plan are unfair. (N.T. at 125, 681; P-163 at 10-11; P-164 at 8-9; P-165 at 6-7, 12, 13; P-166 at 7-8; P-168 at 6-7, 11-12; P-170 at 12; P-171 at 43-44, 68-69; P-173 at 37-38; P-177 at 8-9, 12-13.)

230. Some Petitioners believe that under the 2011 Plan their communities of interest are not located within their congressional districts and that Petitioners' communities do not have anything in common with the other communities that are located within their congressional districts. (N.T. at 677-79, 681-82; P-164 at 4-5, 9-10; P-167 at 12, 14-15.)

231. At least one of Petitioners believes that the 2011 Plan harms his community of interest by splitting it between congressional districts, and, as a result, his community of interest does not have a single Congressman representing its interests. (P-168 at 9-10.)

232. At least one of Petitioners believes that the 2011 Plan makes his Congressman more beholden to the party politics and donors than to the voters. (P-167 at 9-10, 13.)

233. Some Petitioners believe that the 2011 Plan has deterred potential Democratic candidates from running against the Republican incumbents in their congressional districts, and, therefore, they do not have a candidate to vote for or a choice regarding who their Congressperson will be. (P-171 at 41-43, 50, 84; P-177 at 15-16.)

234. At least one of Petitioners believes that the 2011 Plan has created a lack of trust in democracy. (P-172 at 12-13, 17.)

H. Expert Testimony

1. Jowei Chen, Ph.D.

235. The Court accepted Jowei Chen, Ph.D., as an expert in the areas of redistricting and political geography without objection from counsel. (N.T. at 164.)

236. Dr. Chen is an associate professor in the Department of Political Science at the University of Michigan, Ann Arbor; a faculty associate at the Center for Political Studies of the Institute for Social Research at the University of Michigan; and a research associate at the Spatial Social Science Laboratory at Stanford University. (Petitioners' Ex. 1 (P-1) at 1; N.T. at 153-54.) Dr. Chen received an M.S. in statistics from Stanford University in 2007 and a Ph.D. in political science from Stanford University in 2009. (P-1 at 1; N.T. at 153.) Dr. Chen has published academic papers on political geography and districting in political science journals and has expertise in the use of computer algorithms and geographic information systems to study questions related to political and economic geography and redistricting. (P-1 at 1; N.T. at 154-64.)

237. Dr. Chen analyzed the 2011 Plan for the purposes of determining: (1) whether partisan intent was the predominant factor in the drawing of the 2011 Plan; (2) the effect of the 2011 Plan on the number of congressional Democrats and Republicans elected from Pennsylvania; and (3) the effect of the 2011 Plan on the ability of the individual Petitioners to elect a Democrat or Republican congressional candidate from their respective districts. (P-1 at 1-2; N.T. at 165.)

238. Dr. Chen developed various computer simulation programming techniques that allow him to produce a large number of nonpartisan districting plans that adhere to traditional districting criteria using U.S. Census geographies as building blocks. (P-1 at 2; N.T. at 166-69, 205-06.)

239. Dr. Chen's computer simulation process ignored all partisan and racial considerations when drawing districts. (P-1 at 2; N.T. at 370-71.)

240. Dr. Chen's computer simulation process generally utilized traditional districting criteria, which Dr. Chen identified as equalizing population, contiguity, maximizing geographic compactness, and preserving county and municipal boundaries. (P-1 at 2; N.T. at 167.)

241. Dr. Chen analyzed the 2011 Plan against simulated districting plans developed following traditional districting criteria (and some that also provided for incumbency protection) in order to determine whether the distribution of partisan outcomes created by the 2011 Plan plausibly could have emerged from a nonpartisan districting process and, thus, be explained by nonpartisan factors. (P-1 at 5; N.T. at 165-66.)

242. Dr. Chen opined that by holding constant the application of those nonpartisan traditional districting criteria through the simulations, he was able to determine whether the 2011 Plan could have been the product of something other than the intentional pursuit of partisan advantage. (P-1 at 2; N.T. at 166.)

243. Dr. Chen, using a computer algorithm designed to follow closely and optimize the nonpartisan traditional districting criteria he identified, generated 500 simulated districting plans that each would create 18 Pennsylvania congressional voting districts (Set 1). (P-1 at 2; N.T. at 167-68.)

244. Dr. Chen, using the computer algorithm used for Set 1 with the additional criterion of preserving the seats of 17 of the 19 incumbent Pennsylvania Congresspersons who held seats at the time of the creation of the 2011 Plan (the 2012 Incumbents), generated another 500 simulated districting plans that each would create 18 Pennsylvania congressional voting districts (Set 2). (P-1 at 2, 4; N.T. at 172-73, 205-06.)

245. The algorithms prioritized the traditional voting criteria identified by Dr. Chen in the following order: (1) equal population; (2) contiguity of districts; (3) minimization of counties split between districts; (4) minimization of municipality splits; and (5) compactness. (N.T. at 383.)

246. The algorithm for the Set 2 simulated districting plans intentionally guaranteed that 17 of 19 2012 Incumbents resided in separate districts, thus avoiding any pairing of any of the 2012 Incumbents in those 17 districts. Beyond this intentional incumbent protection, the Set 2 algorithm otherwise prioritized the same 5 nonpartisan traditional districting criteria followed in the algorithm for Set 1. Importantly, the computer algorithms ignored the partisanship and the identities of the 2012 Incumbents. (P-1 at 24; N.T. at 206-08.)

247. Dr. Chen's districting simulation process used precisely the same U.S. Census geographies and population data that the General Assembly used in creating congressional voting districts, and, therefore, the simulated districting plans created by Dr. Chen account for the same population patterns and political boundaries across Pennsylvania that the General Assembly encountered when drawing the congressional voting districts under the 2011 Plan. (P-1 at 6; N.T. at 189-90.)

248. Pennsylvania's 2010 U.S. Census population was 12,702,379, so congressional voting districts in the 18-district plan have an ideal population of 705,687.7. Dr. Chen's algorithm was designed to populate 5 simulated districts with 705,687 and 13 simulated districts with 705,688. (P-1 at 8; N.T. at 167.)

249. Dr. Chen's algorithm required districts to be geographically contiguous, with point contiguity prohibited, meaning the districts had to be connected by more than a mere point. (P-1 at 8; N.T. at 167, 456-57, 464.)

250. Dr. Chen's algorithm attempted to avoid splitting any of Pennsylvania's 67 counties, except when doing so was necessary to avoid creating an unequally populated district. (P-1 at 8; N.T. at 167.)

251. Dr. Chen's algorithm also attempted to avoid splitting Pennsylvania's 2,562 municipalities, except where doing so was necessary to avoid creating unequally populated districts or to avoid additional county splits. (P-1 at 8; N.T. at 368-69.)

252. With regard to compactness, Dr. Chen's algorithm prioritized the drawing of geographically compact districts whenever doing so did not violate the aforementioned criteria. (P-1 at 9; N.T at 174-77.)

253. Dr. Chen calculated the geographic compactness of the simulated districting plans by using common measures of compactness—*i.e.*, by using the "Reock" and "Popper Polsby" measures of compactness. (P-1 at 9; N.T. at 166.)

254. After completing the simulations, Dr. Chen measured aspects of the simulated districting plans (Set 1 and Set 2) and the same aspects of the 2011 Plan to determine the extent to which the 2011 Plan deviated from

the 1,000 simulated districting plans (Set 1 and Set 2), beginning with Set 1. (P-1 at 2; N.T. at 166.)

255. Dr. Chen observed that the simulated districting plans in Set 1 all divided less counties than the 2011 Plan, and the 2011 Plan divided far more counties than was reasonably necessary. (P-1 at 2; N.T. at 179-80.) The Set 1 simulated plans split 11 to 16 counties, whereas the 2011 Plan split 28 counties. (P-1 at 8; N.T. 416-17.)

256. Dr. Chen opined that the Set 1 simulation results demonstrated that the 2011 Plan divided more municipalities than the simulated districting plans. The simulated districting plans split 40-58 municipalities, whereas the 2011 Plan split 68 municipalities. (P-1 at 8-9; N.T. at 180-81.)

257. Dr. Chen opined that, based on the Set 1 simulation results, the 2011 Plan's splitting of 28 counties and 68 municipalities was an outcome that could not plausibly have emerged from a districting process that prioritizes traditional districting criteria. (P-1 at 17; N.T. at 181.)

258. Dr. Chen, using the common measures of compactness identified above, observed that the 2011 Plan is significantly less compact than every single one of the Set 1 simulated districting plans and that the 2011 Plan is significantly more geographically non-compact than necessary. (P-1 at 3, 9; N.T. at 180-83.)

259. Dr. Chen also considered the partisan performance of each precinct and opined that the most reliable method of comparing the partisan performance of different legislative districts within a state is to consider whether the districts—and more specifically the precincts that comprise each district—have tended to favor Republican or Democratic candidates in recent competitive

statewide elections. (P-1 at 12; N.T. at 190, 291-92.) He also opined that voter registration data is less reliable for predicting partisanship than recent statewide elections. (P-1 at 12; N.T. at 184, 193-94.)

260. Dr. Chen based his partisan performance calculations for the precincts on the actual votes cast for Republican and Democratic candidates in the following Pennsylvania statewide elections: 2008 Presidential, 2008 Attorney General, 2010 U.S. Senatorial, and 2010 Gubernatorial. He did not base his calculations on voter registration records. (P-1 at 13; N.T. at 186-89.)

261. Dr. Chen chose those election results because they were the most recent results prior to the enactment of the 2011 Plan, they were reasonably closely-contested elections, and the precinct-level vote counts from those elections were available to the General Assembly during its enactment of the 2011 Plan. (P-1 at 13-14; N.T. at 189-90.)

262. Dr. Chen took the election results at the precinct level for the statewide elections identified above and overlaid those precinct level results onto the simulated districting plans and 2011 Plan. Dr. Chen then calculated the number of districts that would have been won by Democrats and Republicans under each districting plan in order to measure the partisan performance of the districting plan. (P-1 at 6-7; N.T. at 185-86, 195-97.)

263. Dr. Chen determined that the 2011 Plan resulted in 13 of the 18 congressional voting districts having partisan performance calculations favoring Republican candidates. Those 13 congressional voting districts correspond with the same 13 districts that have consistently elected Republican congressional representatives during the 2012, 2014, and 2016 general elections. (P-1 at 3, 14; N.T. at 166, 198, 201-04.)

264. Dr. Chen determined that the Set 1 simulated districting plans resulted in the creation of 7 to 10 congressional voting districts having partisan performance calculations favoring Republican candidates and did not result in any simulated districting plan having 13 congressional voting districts with partisan performance calculations favoring Republicans. (P-1 at 3; N.T. at 233.)

265. Dr. Chen opined that the 2011 Plan represents an extreme statistical outlier, creating a level of partisan bias not observed in a single one of the simulated districting plans designed using traditional districting criteria. (P-1 at 3; N.T. at 233.)

266. Dr. Chen assessed the predictive strength of his measure of partisan performance—using precinct-level results from the 2008 and 2010 statewide elections—to predict the congressional elections under the 2011 Plan. Using his measure of partisan performance, Dr. Chen was able to accurately predict the results for 54 out of 54 congressional elections in 2012, 2014, and 2016. (N.T. at 201-04, 410-12.)

267. Based on his analysis of partisan performance calculations, Dr. Chen concluded that the 2011 Plan creates several more congressional voting districts with partisan performance calculations favoring Republicans, which resulted in several more Republican seats than what is generally achievable under a map drawing process respecting nonpartisan, traditional districting criteria. (P-1 at 3; N.T. at 205.)

268. Dr. Chen further concluded, based on the Set 1 simulations, that partisan consideration predominated over other nonpartisan criteria, particularly minimizing county splits and maximizing compactness, in the drawing of the

congressional voting districts in the 2011 Plan. (P-1 at 3, 20; N.T. at 166, 204, 220.)

269. Dr. Chen also compared the Set 1 simulated districting plans to the 2011 Plan by calculating the mean-median gap of the plans. (P-1 at 20; N.T. at 261-63.)

270. Dr. Chen explained that the mean-median gap is another accepted method that redistricting scholars commonly use to compare the relative partisan bias of different districting plans. (P-1 at 20; N.T. at 257.)

271. Dr. Chen explained that the mean of a districting plan is calculated as the average of the Republican vote share across all 18 congressional voting districts, and the median is the Republican vote share in the congressional voting district where Republicans performed the middle-best. (P-1 at 20; N.T. at 257-58.)

272. Dr. Chen, using the aggregated results of the 2008-2010 statewide elections, calculated that the congressional voting districts created by the 2011 Plan have a mean Republican vote share of 47.5%, while the median district has a Republican vote share of 53.4%. Thus, the 2011 Plan has a mean-median gap of 5.9%, indicating that the median district is skewed significantly more Republican than the 2011 Plan's average district. In other words, the 2011 Plan distributes voters across congressional voting districts in such a way that most districts are significantly more Republican-leaning than the average Pennsylvania district, while Democratic voters are more heavily concentrated in a minority of the congressional voting districts. (P-1 at 20; N.T. at 260-64.)

273. Dr. Chen opined that the skew of the mean-median gap in the 2011 Plan created a significant advantage for Republicans by giving them stronger control over the median district. (P-1 at 20; N.T. at 262.)

274. Dr. Chen considered whether the significant mean-median gap arose naturally from applying traditional districting criteria to Pennsylvania, given the state's unique voter geography, or whether the skew in the 2011 Plan's mean-median gap is explainable only as the product of an intentional partisan effort to favor one party over another in the drawing of the congressional voting districts by deviating from traditional districting criteria. (P-1 at 20; N.T. at 260, 264.)

275. To determine the cause of the significant mean-median gap, Dr. Chen examined the range of mean-median gaps that would have arisen under the Set 1 simulated districting plans. The Set 1 simulated districting plans produced mean-median gaps ranging from 0.1% to 4.5%, with the vast majority of the plans producing a mean-median ranging from 0.1% to 3%. (P-1 at 21-22, Fig. 5; N.T. at 262-64.)

276. Dr. Chen concluded with extremely strong statistical certainty that the 2011 Plan's mean-median gap of 5.9% is not the result of Pennsylvania's natural political geography combined with the application of traditional districting criteria. (P-1 at 21; N.T. at 264.)

277. The fact that the Set 1 simulated districting plans all produced a mean-median gap, albeit smaller than the 2011 Plan's mean-median gap, indicates that voter geography is modestly skewed in a manner that slightly benefits Republicans in districting. Dr. Chen opined that this modest skew in the

Set 1 simulated districting plans resulted naturally because Democratic voters tend to cluster in large, urban areas of Pennsylvania. (P-1 at 21; N.T. at 263.)

278. Dr. Chen opined that the range of this natural skew in the Set 1 simulated voting plans, however, is always much smaller than the 5.9% mean-median gap observed in the 2011 Plan. (P-1 at 21; N.T. at 263.)

279. Dr. Chen concluded, based on his analysis of the mean-median gap of the Set 1 simulated districting plans and the 2011 Plan, that the 2011 Plan created an extreme partisan outcome that cannot be explained by Pennsylvania's voter geography or by any of the traditional districting criteria. Instead, the extremity of the 2011 Plan's mean-median gap can be explained only by a districting process that pursued a partisan goal by subordinating traditional districting criteria in the drawing of congressional voting districts. (P-1 at 21; N.T. at 264.)

280. Dr. Chen considered whether an attempt to protect the maximum number of 2012 Incumbents might explain the 2011 Plan's partisan bias. (P-1 at 3, 23; N.T. at 265.)

281. By examining the home residential addresses of the 2012 Incumbents, who were 12 Republicans and 7 Democrats, Dr. Chen observed that the 2011 Plan protected 17 of the 19 2012 Incumbents by avoiding the pairing of 2 or more of the 2012 Incumbents into the same congressional voting district. (P-1 at 3-4, 23; N.T. at 266.)

282. The 2011 Plan paired only Altmire and Critz, the incumbents from the then 4th and 12th Congressional Districts, in a single congressional voting district. (P-1 at 23; N.T. at 225.)

283. Dr. Chen concluded that it was statistically implausible that the 2011 Plan's outcome of 17 protected 2012 Incumbents could have arisen by chance as a result of traditional districting criteria without an intentional effort to protect the 2012 Incumbents. (P-1 at 23; N.T. at 236-37.)

284. Dr. Chen opined that the protection of incumbents is not a traditional districting principle used in the drawing of congressional voting districts. (P-1 at 24; N.T. at 206.) *But see Vieth v. Jubelirer*, 541 U.S. 267, 298 (2004) (plurality opinion) (recognizing incumbency protection as traditional districting principle); *Bush v. Vera*, 517 U.S. 952, 1047-48 (1996) (*Vera*) (Souter, J., dissenting) (acknowledging incumbency protection to be traditional and constitutionally acceptable districting principle).

285. Dr. Chen then analyzed the Set 2 simulated districting plans, which Dr. Chen created by applying nonpartisan traditional districting criteria plus the criterion of protecting 17 of the 19 2012 Incumbents. (P-1 at 23-24; N.T. at 205-07.)

286. The Set 2 simulated districting plans accomplished the goal of protecting 17 of the 19 2012 Incumbents, as did the 2011 Plan, but the Set 2 simulated districting plans achieved this protection at the cost of only a small increase in split counties and a modest decrease in district compactness. (P-1 at 23-24; N.T. at 230-32.) The Set 2 simulated districting plans split between 12 to 19 counties, with the vast majority splitting 15, 16, or 17 counties, whereas the 2011 Plan split 28 counties. (P-1 at 23-24; N.T. at 216-17.)

287. Dr. Chen opined that the 2011 Plan's splitting of 28 counties is still very significantly outside of the entire range of Set 2 simulated districting plans. (P-1 at 24; N.T. at 216-17.)

288. Dr. Chen opined that the 2011 Plan had significantly lower compactness scores than the Set 2 simulated districting plans, and the 2011 Plan's compactness scores were outside the entire range of the compactness scores for the Set 2 simulated districting plans. (P-1 at 24; N.T. at 214.)

289. Dr. Chen concluded, based on his analysis of the Set 2 simulated districting plans, that the 2011 Plan's deviations from the traditional districting criteria of compactness and avoiding county splits are not explained by the goal of protecting 17 of the 2012 Incumbents. (P-1 at 24; N.T. at 217.)

290. Dr. Chen also compared the partisan performance of the Set 2 simulated districting plans to the partisan performance of the 2011 Plan and observed that the vast majority (98%) of the Set 2 simulated districting plans produced 8 to 11 congressional voting districts with partisan performance favoring Republicans. Not one of the Set 2 simulated districting plans contained 13 voting districts with partisan performance favoring Republicans. (P-1 at 27; N.T. at 222.)

291. Dr. Chen concluded with an overwhelmingly high degree of statistical certainty that even an extensive effort by the General Assembly to protect as many of the 2012 Incumbents as possible, while otherwise adhering to nonpartisan traditional districting criteria, would not explain or somehow necessitate the creation of a congressional map with a 13-5 Republican advantage. Instead, it is clear that the 2011 Plan was drawn through a process in which a particular partisan goal—the creation of 13 Republican districts—predominated over adherence to traditional districting criteria of drawing compact districts and avoiding county splits. (P-1 at 27; N.T. at 223.)

292. Dr. Chen opined that the Set 2 simulated districting plans reject any notion that an effort to avoid pairing the 2012 Incumbents in the same

congressional voting district can explain the Republican bias in the 2011 Plan. (P-1 at 4, 27; N.T. at 220.)

293. To determine the cause of the significant mean-median gap favoring Republicans, Dr. Chen examined the range of mean-median gaps that would have arisen under the Set 2 simulated districting plans. (P-1 at 29; N.T. at 262.)

294. Dr. Chen concluded with extremely strong statistical certainty that the 2011 Plan's mean-median gap of 5.9% was not the result of Pennsylvania's natural political geography combined with the application of traditional districting criteria. (P-1 at 29; N.T. at 265-66.)

295. Dr. Chen concluded with extreme statistical certainty that the Republican skew in the 2011 Plan's mean-median gap reflects the intentional pursuit of a partisan outcome that subordinated the traditional districting criteria of avoiding county splits and drawing compact congressional voting districts. (P-1 at 29; N.T. at 266.)

296. With regard to the pairing of Democrats Altmire and Critz in the 2011 Plan, Dr. Chen opined that not one of the Set 2 simulated districting plans paired those 2 2012 Incumbents together in the same congressional voting district. (P-1 at 31; N.T. at 226.)

297. Dr. Chen concluded with strong statistical certainty that the 2011 Plan's pairing of Democrats Altmire and Critz was not the product of a nonpartisan attempt to protect the 2012 Incumbents. (P-1 at 31-32; N.T. at 226-27.)

298. Dr. Chen also considered whether racial goals may explain the statistically extreme partisan composition of the 2011 Plan. (P-1 at 33; N.T. at 238.)

299. Dr. Chen observed that the 2nd Congressional District of the 2011 Plan (which includes areas of Philadelphia) has an African-American VAP of 56.8%, and it is the only district that contains an African-American majority. (P-1 at 4, 33; N.T. at 239.)

300. Dr. Chen analyzed the 259 simulated districting plans generated by Set 1 and Set 2 that included a congressional voting district with an African American VAP of at least 56.8% to determine whether a hypothetical goal of creating a congressional voting district with at least a 56.8% African-American VAP might have caused the extreme 13-5 Republican advantage in the 2011 Plan. (P-1 at 4, 33; N.T. at 245.)

301. Dr. Chen observed that among the 259 simulated districting plans that created at least a 56.8% African-American VAP congressional voting district, not a single simulated districting plan remotely came close to creating 13 congressional voting districts with partisan performance calculations favoring Republicans. Instead, the majority of the relevant Set 1 simulated districting plans contained either 8 or 9 congressional voting districts with partisan performance calculations favoring Republicans, and the vast majority of the relevant Set 2 simulated districting plans contained 8 to 11 congressional voting districts with partisan performance calculations favoring Republicans. (P-1 at 4, 33-35; N.T. at 244-45.)

302. Dr. Chen opined that even if a congressional districting process required a 56.8% African-American VAP congressional voting district, in addition

to allowing for the protection of 17 of the 2012 Incumbents while following traditional districting criteria, such a districting process would generally produce plans with 9, 10, or 11 Republican-leaning seats. (P-1 at 35; N.T. at 249-50.)

303. Based on his analysis of the Set 1 and 2 simulated districting plans that include a congressional voting district with an African-American VAP of at least 56.8%, Dr. Chen rejected any notion that an intentional effort to create such a district might explain the extreme partisan bias observed in the 2011 Plan. (P-1 at 4, 33, 35; N.T. at 245.)

304. Dr. Chen also evaluated the sort of congressional voting district each Petitioner would have been placed into under the Set 1 and Set 2 simulated districting plans and the district into which each Petitioner was placed under the 2011 Plan. He testified with a strong statistical certainty that the 2011 Plan had the effect of treating 4 of the Petitioners differently—meaning they were placed into a different partisan district compared to the sort of districting plans that would have emerged under a districting process respecting traditional districting criteria and possibly even protecting 17 of the 2012 Incumbents in a nonpartisan manner. (P-1 at 35; N.T. at 271-81.)

305. Ultimately, Dr. Chen opined that the 2011 Plan could not have been the product of something other than the intentional pursuit of partisan advantage. (P-1 at 2; N.T. at 166.)

306. Ultimately, Dr. Chen also concluded that partisan considerations predominated over other nonpartisan criteria, particularly minimizing county splits and maximizing compactness, in the drawing of the 2011 Plan. (P-1 at 3; N.T. at 166, 181, 204, 220.)

307. Dr. Chen testified regarding data files purportedly produced by Speaker Turzai in the *Agre* case, but the Court makes no findings regarding that aspect of Dr. Chen's expert report or testimony. (P-1 at 38-41; N.T. at 294-310.)

308. The Court finds Dr. Chen's testimony to be credible.

309. The Court notes that Dr. Chen's testimony established that the General Assembly included factors other than nonpartisan traditional districting criteria in creating the 2011 Plan in order to increase the number of Republican-leaning congressional voting districts.

310. Dr. Chen's testimony, while credible, failed to take into account the communities of interest when creating districting plans. (*See* Dr. Kennedy's testimony, N.T. at 390-91.)

311. Dr. Chen's testimony, while credible, failed to account for the fact that courts have held that a legislature may engage in some level of partisan intent when creating redistricting plans.

312. Dr. Chen's testimony, while credible, failed to provide this Court with any guidance as to the test for when a legislature's use of partisan considerations results in unconstitutional gerrymandering.

2. John J. Kennedy, Ph.D.

313. The Court accepted John J. Kennedy, Ph.D., as an expert in the area of political science, including political geography and political history of Pennsylvania, without objection from counsel. (N.T. at 578-79.)

314. Dr. Kennedy is a professor in the Department of Political Science at West Chester University. Dr. Kennedy received a B.S. in public administration from Kutztown University in 1984, a Master's degree in public administration from Kutztown University in 1988, and a Ph.D. in political science

from Temple University in 1996. Dr. Kennedy has published three books on Pennsylvania politics and has expertise in Pennsylvania government and politics. (Petitioners' Ex. 54; Petitioners' Ex. 53 (P-53) at 1; N.T. at 570-72.)

315. Overall, Dr. Kennedy concluded that the 2011 Plan: (1) negatively affects Pennsylvania's communities of interest at an unprecedented level; (2) contains more anomalies than ever before; (3) places partisan considerations above those of communities of interest; and (4) favors Republican voters over Democratic voters. (N.T. at 579-80, 583, 585, 644.)

316. When asked to describe what he meant by "communities of interest," Dr. Kennedy explained that communities are important to the identity of Pennsylvanians. (N.T. at 583-85.)

317. Even though not defined succinctly, it appears from the sum of Dr. Kennedy's testimony that he considers a community of interest to consist of a group of individual communities that share similar interests and are located in the same geographic region. (N.T. at 590-91, 619, 624-26, 628, 631-32.)

318. Dr. Kennedy described gerrymandering as the political manipulation of district lines to achieve some sort of political result. A gerrymander takes place through the methods of "cracking," "packing," and what he refers to as "hijacking." Cracking occurs when you separate or divide the voters of a particular party across several districts. Packing occurs when you take voters of a particular party who reside in different communities and pack them together in one district based upon their partisan performance. Together, cracking and packing create anomalies—*i.e.*, strangely designed districts, tentacles (a narrow tract of land that connects communities), isthmuses (connecting 2 communities that would not ordinarily have anything in common), and appendages (an arm going

from one area to another). Hijacking occurs when 2 congressional districts (containing 2 separate and distinct communities of interest) controlled by the political party opposite to that in control of the redistricting process are combined, forcing the incumbents to run against one another in the primary election, thereby automatically eliminating one of them. Further, this may result in a district that leaves the incumbent surviving the primary election in a more difficult position in the general election. (P-53 at 2-3; N.T. at 580, 585-87, 634.)

319. Dr. Kennedy stated that the 3rd Congressional District provides an example of cracking. (P-53 at 23; N.T. at 589-90.)

320. Dr. Kennedy opined that there is no apparent nonpartisan explanation for why the 2011 Plan split Erie County, a community of interest, between the 3rd Congressional District and the 5th Congressional District. Dr. Kennedy explained that, historically, Erie County has been Democratic. The 2011 Plan was the first time in the modern era of redistricting that Erie County was cracked. Dr. Kennedy explained further that the 2011 Plan diluted the vote of Democratic voters located in Erie County by pushing the eastern parts of Erie County into the 5th Congressional District, a district that contains a very rural and overwhelmingly Republican county. (P-53 at 23-24; Petitioners' Ex. 73; N.T. at 589-91, 597-98.)

321. Dr. Kennedy stated that the 1st Congressional District provides an example of packing. (P-53 at 20; N.T. at 605-06.)

322. Dr. Kennedy explained that the 1st Congressional District takes in some appendages from Delaware County, where parts of the City of Chester, the town of Swarthmore (which is connected by an isthmus), and some other

Democratic communities are packed into the 1st Congressional District. (P-53 at 20-21; Petitioners' Ex. 70; N.T. at 605-08.)

323. Dr. Kennedy explained that the 7th Congressional District, which is commonly referred to as the "Goofy Kicking Donald Duck" district, has become famous as one of the most gerrymandered districts in the country. Dr. Kennedy described the 7th Congressional District as essentially 2 districts (an eastern district and a western district) that are held together at 2 locations: (1) a tract of land that is roughly the length of 2 football fields and contains a medical facility; and (2) a Creed's Seafood & Steaks in King of Prussia. Dr. Kennedy also indicated that the 7th Congressional District contains 26 split municipalities. (P-53 at 30-33; Petitioners' Exs. 81-83; N.T. at 598-602, 613-14.)

324. Dr. Kennedy explained that the 6th Congressional District, which is likened by some as resembling the State of Florida with a more jagged and elongated panhandle, includes communities in southern Chester County, western Montgomery County, Berks County, and Lebanon County. When asked whether there is anything that unites these communities other than all being located within the 6th Congressional District, Dr. Kennedy opined that they are all separate and distinct communities of interest that have been combined into the 6th Congressional District and not maintained as a whole. Dr. Kennedy also explained that the City of Reading, which is the county seat of Berks County, has been carved out of the 6th Congressional District. Dr. Kennedy opined that this changes the partisan makeup and performance of the 6th Congressional District considerably because the City of Reading is a very Democratic city. (P-53 at 28-29; Petitioners' Ex. 78; N.T. at 615-17, 621-22.)

325. Dr. Kennedy explained that the 16th Congressional District, which is based in Amish country and has always been one of the more Republican districts in Pennsylvania, has taken on some appendages. Dr. Kennedy explained further that Democratic municipalities, such as Coatesville, were removed from Chester County and the 6th Congressional District and appended onto the 16th Congressional District. Similarly, the City of Reading was taken out of the 6th Congressional District via a very narrow isthmus and appended onto the 16th Congressional District. Dr. Kennedy opined that appending these communities onto the 16th Congressional District has the net political effect of diluting Democratic precincts and Democratic performance in Reading and Coatesville. In terms of communities of interest, Dr. Kennedy explained that Coatesville has commonalities with the 6th Congressional District, not Amish country. (P-53 at 50-53; Petitioners' Exs. 97, 99; N.T. at 618-20.)

326. Dr. Kennedy explained that the 15th Congressional District contains 2 diverse communities of interest: the Lehigh Valley and parts of Berks, Dauphin, and Lebanon Counties. Dr. Kennedy explained further that, historically, the 15th Congressional District has been primarily a Lehigh Valley district, but under the 2011 Plan, the Lehigh Valley district no longer exists because a segment of Northampton County, including Easton, and a quarter of the City of Bethlehem are cracked out of the district and the district is extended down to Hershey, Pennsylvania. (P-53 at 47-49; Petitioners' Ex. 95; N.T. at 623-26.)

327. Dr. Kennedy stated that the 17th Congressional District is a textbook example of packing. (N.T. at 627-28.)

328. Dr. Kennedy explained that the 17th Congressional District is composed of 2 separate and distinct communities of interest:

Scranton/Wilkes-Barre and Easton/Bethlehem. Dr. Kennedy opined that Easton and Bethlehem belong with Allentown, not Wilkes-Barre and Scranton. (P-53 at 54-55; Petitioners' Ex. 102; N.T. at 626-29.)

329. Dr. Kennedy explained that the 11th Congressional District is almost a straight vertical district from the northern end of Wyoming County down to Cumberland County, approximately 200 miles long. Dr. Kennedy explained further that Scranton and Wilkes-Barre have been removed from the 11th Congressional District and packed into the 17th Congressional District and that the City of Harrisburg has been carved out of the 11th Congressional District. (P-53 at 40-41; N.T. at 629-31.)

330. Dr. Kennedy explained that the 4th Congressional District is historically a very Republican district. Dr. Kennedy explained further that the City of Harrisburg, which had previously been located with communities of interest in Central Pennsylvania and the Harrisburg metro area, is now the northernmost tip of the 4th Congressional District. Dr. Kennedy opined that the overall impact of moving the City of Harrisburg, a predominantly Democratic city, into the 4th Congressional District is to dilute the Democratic vote in Harrisburg. (P-53 at 25-26; Petitioners' Ex. 75; N.T. at 631-32.)

331. Dr. Kennedy explained that the 2011 Plan is the first time that Dauphin County has been splintered among congressional districts. (N.T. at 632.)

332. Dr. Kennedy stated that the 12th Congressional District is an example of hijacking. (N.T. at 634-65.)

333. Dr. Kennedy explained that the 12th Congressional District is approximately 120 miles long and runs along 4 other congressional districts to connect what was the old 4th Congressional District and the old 12th Congressional

District. Dr. Kennedy explained further that the net effect of combining these districts was to force 2 Democrat incumbents, Altmire and Critz, to run off against one another in the 2012 Democratic primary election, automatically eliminating one of them, which Dr. Kennedy described as an example of "hijacking." Nevertheless, Dr. Kennedy conceded that under the 2011 Plan, 2 incumbents had to be paired together into 1 congressional district, unless one of them decided not to run for reelection. Republican-performing areas, particularly in Westmoreland County, were also added to the 12th Congressional District, which Dr. Kennedy opined was to make the district overall more Republican. (P-53 at 42; N.T. at 634-35, 662-63.)

334. Dr. Kennedy opined that the 14th Congressional District contains a tentacle that rises up through the Allegheny River to pack certain Democratic precincts into the 14th Congressional District, which is already very Democratic, thereby diluting the Democratic vote in the 12th Congressional District. (P-53 at 45-46; Petitioners' Ex. 93; N.T. at 635-36.)

335. Dr. Kennedy opined that while the number of split counties and municipalities is indicative of a gerrymander, they do not tell the whole story. Dr. Kennedy explained that county and municipality splits are not necessarily indicative of splitting a community of interest. For example, Dr. Kennedy explained that he does not view the removal of 1 district in Upper Macungie Township as splitting the community of interest known as the Leigh Valley, because it is not the same as removing Easton, the county seat, one-fourth of the City of Bethlehem, and a number of other Democratic municipalities from the 15th Congressional District. (Petitioners' Ex. 56; N.T. at 637-41.)

336. Dr. Kennedy explained that the 2011 Plan contains 19 census block splits (splitting neighborhoods between congressional districts), which is considerably more than prior Pennsylvania congressional district maps. (P-53 at 5; Petitioners' Ex. 57; N.T. at 641-43.)

337. Dr. Kennedy explained that the 2011 Plan splits certain counties considerably more than others: (1) Montgomery County, which is the third largest county in Pennsylvania, is split into 5 congressional districts; and (2) Westmoreland and Berks Counties, which have relatively lower populations, are split into 4 congressional districts. (N.T. at 643-44.)

338. Ultimately, Dr. Kennedy opined that the 2011 Plan is a gerrymandered congressional map. (N.T. at 644.)

339. The Court finds Dr. Kennedy's testimony to be credible.

340. Dr. Kennedy's testimony, while credible, did not address the intent behind the 2011 Plan. (N.T. at 645-46.)

341. Moreover, to the extent that Dr. Kennedy offered an opinion on an ultimate question of law—*i.e.*, whether the 2011 Plan is an unconstitutional political gerrymander, the opinion is disregarded.

3. Wesley Pegden, Ph.D.

342. The Court accepted the testimony of Wesley Pegden, Ph.D., as an expert in the area of mathematical probability without objection from counsel. (N.T. at 715-16.)

343. Dr. Pegden is an associate professor in the Department of Mathematical Sciences at Carnegie Mellon University. Dr. Pegden received a Ph.D. in Mathematics from Rutgers University. Dr. Pegden has published academic papers, including an academic paper co-authored with 2 others that was

published in the Proceedings of the National Academy of Sciences in early 2017 (Pegden Article), which set forth a new statistical test to demonstrate that a configuration is an outlier in a rigorous statistical sense. (Petitioners' Ex. 117 (P-117) at 1; N.T. at 707, 710-13.)

344. Petitioners asked Dr. Pegden to analyze whether the Republican advantage in the 2011 Plan could be a consequence of nonpartisan factors such as the political geography of the state. In so doing, Dr. Pegden analyzed whether the 2011 Plan is a typical member of the set of possible districting plans of Pennsylvania with respect to its partisan bias or whether it is an outlier with respect to partisan bias. (P-117 at 1-2; N.T. at 716-17.)

345. In order to answer those questions, Dr. Pegden analyzed whether the partisan bias in the 2011 Plan is fragile, such that it evaporates when many random small changes are made to the districting plan, by developing a computer algorithm that starts with the 2011 Plan and makes many random small changes to the 2011 Plan in succession. (P-117 at 1; N.T. at 722-23.)

346. Dr. Pegden explained that the number of possible districting plans can be astronomical, so one cannot look at all of them to perform a one-by-one comparison. (P-117 at 4 n.5; N.T. at 720.)

347. Dr. Pegden developed a computer algorithm that began with the 2011 Plan and randomly selected a precinct on the boundary of 2 congressional voting districts (Step 1). If the precinct could be swapped with a precinct in the other district without violating the constraints placed on the districts, then the computer algorithm made the swap (Step 2). Using voter preference data, the computer algorithm used the mean-median test to evaluate the partisan bias of the new districting plan and recorded whether it was more or less biased than the

2011 Plan (Step 3). The computer algorithm then repeated Step 2 and Step 3 as many times as instructed. (P-117 at 4, 4 n.6, 8; N.T. at 721-31.)

348. To assess the partisan bias of a given districting plan, Dr. Pegden estimated voter preference in each precinct that comprised the districts by using election results for the 2010 PA Senate race between Pat Toomey and Joe Sestak, because it was a statewide race, there was no incumbent in the race, and it was among the most recent data available to mapmakers when drawing the 2011 Plan. (P-117 at 9; N.T. at 737-38, 783.)

349. Dr. Pegden's computer algorithm employed a variation of a Markov Chain developed by Dr. Pegden. In this context, a Markov Chain is a way of generating a random sample through a series of small changes. (P-117 at 4 n.4; N.T. at 790-94.)

350. Dr. Pegden ran his computer algorithm such that it made approximately 1,000,000,000,000 (1 trillion) random small changes to the 2011 Plan in succession. (P-117 at 1; N.T. at 731.) The computer algorithm could only make changes that would result in simulated congressional districting plans per the parameters or constraints set by Dr. Pegden, which included districting plans consisting of 18 contiguous districts, equipopulous districts (with an allowable 2% difference between districts), and reasonably shaped—*i.e.*, compact—districts. (P-117 at 2-3; N.T. at 726-28.) By specifying such parameters and constraints, the computer algorithm created what Dr. Pegden referred to as a "bag of districting [plans]," which are "candidate" or simulated possible alternative districting plans for Pennsylvania. (P-117 at 3; N.T. at 720-21.)

351. Dr. Pegden also altered the parameters or constraints used in the computer algorithm, such as changing the allowable difference in population

between simulated districts from 2% to 1%, not dividing any counties not divided by the 2011 Plan, and keeping intact the current 2nd Congressional District (which is a majority-minority district) in order to create additional bags of districting plans. (P-117 at 3; N.T. at 739-42, 744-45.)

352. Dr. Pegden chose his parameters or constraints so that the 2011 Plan met all of the corresponding requirements under consideration, because his goal was not to compare the 2011 Plan to other "better" simulated possible alternative districting plans which satisfy stricter requirements. Instead, Dr. Pegden assumed that the geometric properties of the 2011 Plan are reasonable, and he compared the 2011 Plan to the other possible alternative districting plans of Pennsylvania with the same properties. (P-117 at 3; N.T. at 733-34.)

353. Dr. Pegden acknowledged that his use of a parameter or constraint of an allowable 2% population difference between districts is not as an exacting standard as using an allowable difference of 1% or 0%, but he opined that the small population variations between districts cannot account for the extreme outlier status of the 2011 Plan. (P-117 at 4; N.T. at 779-80.) He was confident in that representation because he generated a smaller bag of districting plans using the 1% allowable difference in population parameter or constraint, and it did not affect the outcome. (P-117 at 4; N.T. at 780.)

354. Dr. Pegden's analysis was based on what he characterized in his expert report as a conservative definition of what is a "gerrymandered" districting plan, which would require that the districting plan be considered "gerrymandered" only if it passed the following 3-prong test (Test):

a. The districting plan has partisan bias for one party;

b. Small random changes to the districting plan rapidly decrease the partisan bias of the districting plan, demonstrating that the districting plan was carefully crafted; and

c. The overwhelming majority of the alternative districts of the state exhibit less partisan bias than the districting plan in question.

(P-117 at 2.)

355. Based on the results generated from the computer algorithm, Dr. Pegden concluded that the 2011 Plan is a gross outlier with regard to partisan bias among the set of all possible congressional districting plans for Pennsylvania. (P-117 at 1; N.T. at 717.)

356. Based on the results generated from the computer algorithm, Dr. Pegden concluded that the 2011 Plan exhibits more partisan bias than roughly 99.999999% of the simulated possible alternative districting plans created by his computer algorithm, which he contended establishes that the General Assembly carefully crafted the 2011 Plan to ensure a Republican advantage. (P-117 at 1; N.T. at 749-52.)

357. Dr. Pegden concluded that the Republican advantage created by the 2011 Plan was not caused by Pennsylvania's political geography. This is because, while political geography might conceivably join forces with traditional districting criteria to create a situation where typical districting plans of a state are biased in favor of one party, the political geography of a state does not interact with the traditional districting criteria to create a situation where typical districting plans of a state quickly exhibit decreased partisan bias when undergoing random swaps. (P-117 at 1; N.T. at 748-51, 755-56.)

358. Dr. Pegden concluded that not only does the 2011 Plan exhibit a strong partisan bias as required by the first prong of the Test, but it also satisfies the second prong of the Test to an extreme degree, which requires that small random changes to the 2011 Plan rapidly decrease the partisan bias of the 2011 Plan, thereby demonstrating that the General Assembly carefully crafted the 2011 Plan. (P-117 at 2, 4; N.T. at 751-53.) Dr. Pegden opined that when a districting plan strongly satisfies the second prong of the Test, then it must also satisfy the third prong of the Test, regardless of political geography. (N.T. at 733-34, 748-49.)

359. Ultimately, Dr. Pegden concluded that Pennsylvania's congressional voting districts are dramatically gerrymandered, and the 2011 Plan is an extreme outlier among the set of possible alternative districting plans in a way that is insensitive to how precisely the set of alternatives are defined. (P-117 at 8; N.T. at 753.)

360. The Court finds Dr. Pegden's testimony to be credible.

361. Dr. Pegden's testimony, like Dr. Chen's, however, failed to take into account other districting considerations, such as not splitting municipalities, communities of interest, and some permissible level of incumbent protection and partisan intent.

362. Dr. Pegden's computer algorithm did not account for the permissible districting considerations discussed above.

363. Moreover, to the extent that Dr. Pegden offered an opinion on an ultimate question of law—*i.e.*, whether the 2011 Plan is an unconstitutional political gerrymander, the opinion is disregarded.

4. Christopher Warshaw, Ph.D.

364. The Court accepted Christopher Warshaw, Ph.D., as an expert in American politics in the areas of political representation, public opinion, elections, and polarization. (N.T. at 834-35.)

365. Dr. Warshaw is an assistant professor of political science at George Washington University. He received a J.D. from Stanford Law School and a Ph.D. in political science from Stanford University. Dr. Warshaw has published various academic articles. (Petitioners' Ex. 35 (P-35) at 1-3; N.T. at 825-34.)

366. Dr. Warshaw analyzed relevant data for the purposes of: (1) evaluating the degree of partisan bias in the 2011 Plan, including providing a historical perspective of partisan bias in Pennsylvania; (2) evaluating polarization with regard to members of Congress and whether the polarization magnifies the effects of gerrymandering; (3) examining the consequences of the 2011 Plan on the representation that Pennsylvania residents receive in Congress in the context of growing polarization in Congress; and (4) examining the consequences of the 2011 Plan in Pennsylvania on citizens' trust in government. (P-35 at 1; N.T. at 836-38.)

367. Dr. Warshaw explained that the goal of partisan gerrymandering is to create legislative districts that are as efficient as possible in translating a party's vote share into seat share. This entails drawing districts in which the supporters of the advantaged party constitute either a slim majority or a small minority. This involves practices referred to as "cracking" and "packing." (P-35 at 4; N.T. at 839.)

368. Dr. Warshaw explained that, in a "cracked" district, the disadvantaged party narrowly loses, wasting a large number of votes without

winning a seat. In a "packed" district, the disadvantaged party wins overwhelmingly, wasting a large number of votes. (P-35 at 4; N.T. at 839.)

369. The "efficiency gap" is a metric used to capture the ratio of wasted votes by each party. (P-35 at 3; N.T. at 840-41.) The efficiency gap is defined as the difference between the parties' respective "wasted votes," divided by the total number of votes cast in the election. In calculating the efficiency gap, all of the losing party's votes are wasted if it loses the election. As to the winning party, the wasted votes are those above the 50% plus 1 vote required to win. (P-35 at 5; N.T. at 844-48.)

370. Dr. Warshaw opined that the efficiency gap mathematically captures the cracking and packing practices that occur with partisan gerrymandering. (P-35 at 6; N.T. at 840-41.)

371. Dr. Warshaw opined that historically the vast majority of efficiency gaps in states with more than 6 congressional seats lie close to 0, roughly 75% of the efficiency gaps lie between -10% and 10%, and only about 4% have more than a 20% advantage to either party. (P-35 at 7-8; N.T. at 865.)

372. Dr. Warshaw opined that after the most-recent nationwide redistricting in 2012, Republican advantage grew significantly, with Republicans abruptly developing a very substantial net advantage in the translation of congressional votes to seats. (P-35 at 9; N.T. at 987.)

373. Dr. Warshaw opined that studies strongly suggest that political control of redistricting continues to have large and durable effects, and that partisan gerrymandering is unlikely to be remedied through the normal electoral process. (P-35 at 10; N.T. at 890-91.)

374. Dr. Warshaw calculated that the average efficiency gap nationwide went from approximately 0 in 2010 to an average Republican advantage of 8% in 2012 when new congressional districts came into existence. (P-35 at 9; N.T. at 988.) Dr. Warshaw opined that the sharpness of the change in the efficiency gap nationwide between 2010 and 2012 makes it unlikely to have been caused by geographic changes or nonpolitical factors. (P-35 at 9; N.T. at 879, 982-84.)

375. Dr. Warshaw explained that the efficiency gap can be non-zero and differ across state lines for reasons unrelated to the drawing of district lines, such as how different demographic groups are distributed across geographic space. (P-35 at 9; N.T. at 983, 990-91.) The efficiency gap can also be affected by the intentional drawing of district lines to accomplish goals other than maximizing partisan seat share, such as ensuring the representation of racial minorities. (P-35 at 9; N.T. at 991.)

376. Dr. Warshaw opined that in recent elections, Pennsylvania has had a pro-Republican efficiency gap that is extreme relative to both its own historical efficiency gaps and the efficiency gaps in other states. (P-35 at 3-4, 11-12; N.T. at 871-72, 874, 899.)

377. As to Pennsylvania, Dr. Warshaw opined that Pennsylvania had a modestly pro-Democratic efficiency gap in the 1970s, which evaporated by the 1980s. From about 1980 through 2010, neither party had a persistent advantage in the efficiency gap. The 2011 Plan, however, led to a large Republican advantage in Pennsylvania congressional elections unlike what the state experienced after previous redistricting periods. (P-35 at 12; N.T. at 870-72.)

378. Dr. Warshaw opined that, in 2012, the Democrats wasted 1.3 million more votes than Republicans. (P-35 at 12; N.T. at 952.) Republican candidates won only 49% of the statewide vote, but they won 13 of 18 (72%) of Pennsylvania's congressional seats, which translated into a pro-Republican efficiency gap of approximately -24%. (P-35 at 12-13; N.T. at 871, 896-97.)

379. Dr. Warshaw opined that Democratic candidates received 51% of the congressional votes in 2012 but only won 5 of Pennsylvania's congressional seats, generally by overwhelming margins. (P-35 at 13; N.T. at 896-97.)

380. The efficiency gaps in Pennsylvania during the past 3 elections were among the most Republican-leaning efficiency gaps the nation has ever seen. (P-35 at 4, 12; N.T. at 874, 899.) The 2012 efficiency gap in Pennsylvania was the most Republican-leaning efficiency gap in the 2010 cycle among states with more than 6 seats and the second largest one in history. Averaging the past 3 elections (2012, 2014, 2016), Pennsylvania had the second most Republican-leaning efficiency gap in the country (19%). (P-35 at 15; N.T. at 899-1000.)

381. Dr. Warshaw opined that the efficiency gap in Pennsylvania was 24% in 2012; 15% in 2014; and 19% in 2016. (P-35 at 11-13; N.T. at 871, 1000-01.)

382. Dr. Warshaw cited recent studies for the proposition that these efficiency gaps imply that Republicans in Pennsylvania have won 3 or 4 more seats in these elections than they would have won if Pennsylvania had no partisan bias in its efficiency gap. (P-35 at 13-14; N.T. at 873.)

383. Dr. Warshaw opined that the more extreme pro-Republican efficiency gap that developed following the 2011 Plan suggests that geographic factors are unlikely to be the cause of the large efficiency gap in Pennsylvania in recent elections. (P-35 at 14; N.T. at 879, 982-83.)

384. Dr. Warshaw concluded that the 2011 Plan disadvantages the Democratic Party when compared to the Republican Party in ways that are historically extreme. (P-35 at 3; N.T. at 872, 874, 885-86, 899, 984.) There were substantially more wasted Democratic votes in Pennsylvania congressional elections than Republican votes, which Dr. Warshaw opined has led to a substantial and durable pro-Republican bias in the translation of votes to seats in congressional elections in Pennsylvania. (P-35 at 3; N.T. at 836, 999-1000.)

385. Dr. Warshaw opined that the recent efficiency gaps in Pennsylvania are quite durable, which suggests that partisan gerrymandering is unlikely to be remedied through the normal electoral process. (P-35 at 4; N.T. at 887, 999-1000.)

386. Dr. Warshaw opined that the Republican-leaning efficiency gap created conditions where many Democratic voters in Pennsylvania are unable to elect representatives of their choice, and they are artificially deprived of the opportunity to elect someone who shares their values. (P-35 at 15; N.T. at 932-33.)

387. Dr. Warshaw concluded that the pro-Republican advantage in congressional elections in Pennsylvania has important representational consequences for voters. He based this conclusion on his opinion that, due to the growing polarization in Congress, there is a massive difference between the roll call voting behavior of Democrats and Republicans, such that Democratic voters

whose votes are wasted in Pennsylvania are unlikely to see their preferences represented by their Congressperson. (P-35 at 4, 15; N.T. at 902-03.)

388. Dr. Warshaw concluded that the pro-Republican bias in Pennsylvania elections contributes to a lack of trust in Congress. (P-35 at 4, 25-26; N.T. at 952-53.)

389. The Court finds Dr. Warshaw's testimony to be credible, particularly regarding the existence of an "efficiency gap" in Pennsylvania, as that measure has been employed in recent gerrymandering analyses. The full meaning and effect of the existing efficiency gap, however, requires some speculation and does not take into account some relevant considerations, such as quality of candidates, incumbency advantage, and voter turnout.

390. The Court's other lingering concern is how, in a gerrymandering analysis, the efficiency gap devalues competitive elections. Specifically, if a "fair" district is one in which the Republican and Democratic candidates have a roughly equal chance of prevailing in the election, a close contest will yield a substantial efficiency gap in favor of the prevailing party. In this regard, the efficiency gap treats a "fair" and competitive district as unfair and possibly unconstitutionally gerrymandered.

391. The Court also finds that Dr. Warshaw's comparison of Pennsylvania's efficiency gap with other states has limited value, as Dr. Warshaw failed to take account for differences between states in terms of how congressional districts are drawn (*e.g.*, by an elected partisan legislature or by a nonpartisan commission) and the extent to which each state has enacted laws or constitutional provisions that impose limitations on the drawing of congressional districts. In

other words, his state-by-state comparison is not reflective of an apples-to-apples analysis.

5. Wendy K. Tam Cho, Ph.D.

392. The Court accepted Wendy K. Tam Cho, Ph.D., as an expert in the area of political science, with a focus on political geography, redistricting, American elections, operations research, statistics, probability, and high-performance computing. (N.T. at 1132.)

393. Dr. Cho is a full professor at the University of Illinois, Urbana-Champaign, with appointments in the departments of Political Science, Statistics, and Asian American Studies, as well as the College of Law. (Legislative Respondents' Ex. 11 (LR-11) at 1; N.T. at 1114-15.) Dr. Cho received her Bachelor's degrees in Political Science and Math, her Master's degrees in Political Science and Statistics, and her Ph.D. in Political Science, all from the University of California at Berkeley. (Legislative Respondents' Ex. 10 at 1; N.T. at 1114.) Dr. Cho has published academic papers on redistricting as it pertains to operations research, high-performance computing, engineering, law, and political science and has expertise in the use of computer algorithms in redistricting. (LR-11 at 1-2; N.T. at 1120-21.)

394. Dr. Cho did not use or develop an algorithm of her own to analyze the 2011 Plan. Instead, Legislative Respondents retained Dr. Cho to provide comment on the expert reports of Dr. Pegden and Dr. Chen. (LR-11 at 2; N.T. at 1132.)

395. Dr. Cho opined that Dr. Chen's algorithm and code that produced Set 1 and Set 2 of simulated districting plans did not yield samples of random maps, because the code is deterministic, not random. (LR-11 at 19-21;

N.T. at 1137-38.) Dr. Cho testified, however, that she did not review Dr. Chen's algorithm or code written to execute the algorithm. (LR-11 at 10; N.T. at 1141.)

396. Dr. Chen testified on rebuttal that Dr. Cho's testimony on this point was inaccurate. Dr. Chen also testified regarding the specific source code written to result in random (not deterministic) swaps. (N.T. at 1650-75.)

397. Dr. Cho criticized Dr. Pegden's algorithm and opined that Dr. Pegden's "bag of alternative" maps cannot be compared to the 2011 Plan because he failed to incorporate traditional districting criteria like avoiding municipal splits and incumbency protection, which she believed were considerations that the General Assembly incorporated during the mapmaking process. (LR-11 at 10; N.T. at 1219.) Dr. Cho testified, however, that she did not review Dr. Pegden's algorithm or code written to execute the algorithm. (N.T. at 1293-95.) Dr. Pegden testified on rebuttal and addressed Dr. Cho's criticisms of his algorithm to the satisfaction of the Court. (N.T. at 1362-94.)

398. The Court finds Dr. Cho's testimony not credible with regard to her criticisms of the algorithms used by Dr. Chen and Dr. Pegden, but credible with regard to her observation that Dr. Pegden's algorithm failed to avoid municipal splits and did not account for permissible incumbency protection.

399. Dr. Cho's testimony does not lessen the weight given to Dr. Chen's testimony that adherence to (what he considers to be) traditional redistricting criteria does not explain the partisan bias of the 2011 Plan.

400. Dr. Cho's testimony does not lessen the weight given to Dr. Pegden's conclusion that the 2011 Plan is an outlier when compared to maps with nearly identical population equality, contiguity, compactness, and number of county splits.

401. Dr. Cho's testimony failed to provide this Court with any guidance as to the test for when a legislature's use of partisan considerations results in unconstitutional gerrymandering.

6. Nolan McCarty, Ph.D.

402. The Court accepted Nolan McCarty, Ph.D., as an expert in the areas of redistricting, quantitative election and political analysis, representation and legislative behavior, and voting behavior. (N.T. at 1417-18.)

403. Dr. McCarty has a Bachelor's degree in economics from the University of Chicago, and a M.S. and Ph.D. in economics from Carnegie Mellon University. Dr. McCarty is a professor of politics and public affairs at Princeton University, and he is Chair of Princeton's Department of Politics. He has written academic articles regarding redistricting. (Legislative Respondents' Ex. 16 at 1-3; N.T. at 1409-14.)

404. Legislative Respondents retained Dr. McCarty to provide comment on the expert reports of Dr. Chen and Dr. Warshaw. (Legislative Respondents' Ex. 17 (LR-17) at 1.)

405. Dr. McCarty explained that he analyzed whether congressional districts created under the 2011 Plan were Republican-leaning or Democratic-leaning by calculating the partisan voting index (PVI) of each congressional district. He explained that the PVI was based on presidential vote returns. A PVI is calculated by taking the presidential voting returns of the previous 2 elections in a congressional voting district, then subtracting the national performance of each of the parties from that measure, and then taking the average over those 2 elections. (N.T. at 1418-21.)

406. Based on his analysis using the PVI of each congressional voting district, Dr. McCarty opined that Democrats should have won 8 seats under the 2011 Plan and that their failure to do so was based upon other outcomes, such as candidate quality, incumbency, spending, national tides, and trends within the electorate. (N.T. at 1447-48.) After examining the PVI of congressional districts and the efficiency gaps in those districts, Dr. McCarty saw no evidence to demonstrate that the 2011 Plan gives the Republicans a partisan advantage from redistricting. (N.T. at 1489-90.)

407. Dr. McCarty criticized the method Dr. Chen used to calculate the partisan performance of a district and opined that it is an imperfect predictor of how a district will vote in congressional elections. (LR-17 at 3, 20; N.T. at 1458-76.) Dr. Chen testified on rebuttal and addressed Dr. McCarty's criticisms to the satisfaction of the Court. (N.T. at 1675-1701.)

408. Dr. McCarty criticized Dr. Warshaw's claim that gerrymandering exacerbates the problems associated with the level of disagreement between members of opposing political parties—*i.e.*, polarization. Dr. McCarty essentially opined that gerrymandering does not exacerbate problems associated with polarization because: (1) Democratic voters who are "packed" into congressional voting districts benefit by being packed because they have a better chance to elect a candidate of their choice; and (2) Democratic voters who are "cracked" are placed in districts with small Republican majorities that elect Democrats with some regularity. (LR-17 at 14-15; N.T. at 1477-82.) Dr. McCarty also criticized Dr. Warshaw's reliance on the efficiency gap as an indicator of gerrymandering, contending that: (1) the efficiency gap does not account for partisan bias resulting naturally from geographic sorting; (2) proponents of the

efficiency gap have not developed principled ways of determining when an efficiency gap is too large to be justified by geographic sorting; and (3) close elections can have an effect on the calculation of efficiency gaps. He opined that there are many components to wasted votes that are not related to partisan districting. (LR-17 at 18-20; N.T. at 1482-89.)

409. The Court finds Dr. McCarty's testimony not credible with regard to criticism of Dr. Chen's report, as the methodology employed by Dr. Chen to calculate partisan performance appears to have been a reliable predictor of election outcomes in Pennsylvania since the enactment of the 2011 Plan. The Court notes that Dr. Chen's methodology resulted in accurate predictions for 54 out of 54 congressional elections under the 2011 Plan.

410. With regard to Dr. McCarty's testimony in response to Dr. Warshaw's expert report, the Court finds it not credible to the extent Dr. McCarty disagrees that gerrymandering does not exacerbate problems associated with polarization and with his contention that cracked and packed districts benefit the voters who are placed in cracked and packed districts. The Court further finds his testimony not credible relating to Dr. Warshaw's reliance on the efficiency gap, because Dr. Warshaw accounted for some geographic sorting in his analysis of the efficiency gap and did not dispute that close elections can impact the calculation of an efficiency gap. The Court finds credible Dr. McCarty's testimony that proponents of the efficiency gap have not developed principled ways of determining when an efficiency gap is so large that it evidences partisan gerrymandering and that there are many components to wasted votes that are not related to partisan districting.

411. Dr. McCarty's testimony does not lessen the weight given to Dr. Chen's testimony that the 2011 Plan is an outlier with respect to its partisan advantage.

412. Dr. McCarty's testimony does not lessen the weight given to Dr. Warshaw's testimony that an efficiency gap exists in Pennsylvania and that gerrymandering exacerbates problems associated with polarization.

413. Dr. McCarty's testimony failed to provide this Court with any guidance as to the test for when a legislature's use of partisan considerations results in unconstitutional gerrymandering.

7. Summary of Expert Findings

414. The Court found the testimony of Drs. Chen, Kennedy, Pegden, and Warshaw credible. Their collective testimony, however, has limited utility. Accepting their opinions, the 2011 Plan has a partisan skew in favor of Republican candidates. Indeed, by their respective measures, the skew is substantial in relation to their method of comparison.

415. The Court found the testimony of Drs. Cho and McCarty largely not credible in their criticisms of Petitioners' expert witnesses, and the testimony of Drs. Cho and McCarty did not provide the Court with any guidance as to the test for when a legislature's use of partisan considerations results in unconstitutional gerrymandering.

416. Dr. Chen compared the partisanship of the 2011 Plan to 2 sets of simulated districting plans. Dr. Chen created Set 1 using certain traditional districting criteria and created Set 2 with an additional constraint of pairing as few 2012 Incumbents together in a district as possible (how Dr. Chen defines "incumbency protection"). By comparing the partisanship of both sets of

simulated districting plans to the 2011 Plan and assigning a partisanship score to those plans, Dr. Chen concluded, in essence, that the 2011 Plan is much more partisan than the plans he simulated.

417. Dr. Pegden took a different approach. Using his proprietary algorithm, which employed a Markov Chain analysis, Dr. Pegden offered a probability calculation on the likelihood that the 2011 Plan is "similar" to a computer-generated series of plans—what Dr. Pegden referred to as his "bag of districting plans." Like Dr. Chen, Dr. Pegden assigned a partisanship score to the 2011 Plan and the computer-generated plans in his "bag of districting plans." Applying his analytics, Dr. Pegden concluded that the 2011 Plan is indeed an outlier from the plans in his "bag of districting plans" in that it is so carefully drawn that its partisan score is skewed in favor of Republican candidates to a further degree than any plan generated by his algorithm.

418. Finally, Dr. Warshaw employed the "efficiency gap" metric. In using this metric, Dr. Warshaw was able to assign a number value (+/-), relative to 0, reflecting the political leaning of each state's congressional districts. He then compared the value assigned to the 2011 Plan to (a) Pennsylvania's historical congressional maps and (b) the congressional maps of other states. In offering this comparison, Dr. Warshaw opined that the 2011 Plan is (a) the most partisan plan in Pennsylvania history and (b) one of the most partisan plans in the country (second only to North Carolina) among states with more than 6 congressional seats. This Court notes that while Dr. Warshaw's testimony was credible, it did little to alleviate concerns regarding the use of the efficiency gap in gerrymandering cases. The efficiency gap determinations were central to the plaintiffs' case in *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016) (*Whitford*), and undoubtedly will be

addressed in the United States Supreme Court's ultimate decision in *Gill*. The efficiency gap's utility is uncertain, and this Court has noted a few reasons why our Supreme Court should hesitate to endorse it as clear evidence of unconstitutional gerrymandering. (*See* Findings of Fact ¶¶ 388-90.) The very notion of a "wasted" vote is anathema to our democracy, and our courts should not embrace such a concept. The notion of wasted votes is particularly noxious in the context of a close election, where traditionally the American (and Pennsylvanian) mantra is "every vote counts."

419. In short, each of Petitioners' experts has established, through different measures and statistical devices, that the 2011 Plan is more partisan than (a) computer-generated "neutral" plans and (b) plans in other states. Though informative, these comparisons do not address the central question in this case.

420. Because the law does not require legislatures to draw congressional lines with equal (actual or rough) distribution of likely Republican voters and likely Democratic voters, nor does it require any proportionality of seats relative to party performance in statewide elections, *see Davis v. Bandemer*, 478 U.S. 109, 130 (1986) (*Bandemer*), partisanship is part of the process. In the elections of members of the General Assembly and the Governor leading up the drawing of the 2011 Plan, Pennsylvania voters elected Republicans to control the congressional redistricting process. There should be no surprise then that when choices had to be made in how to draw congressional districts,[19] elected

[19] By way of example, as a result of the 2010 U.S. Census, Pennsylvania's apportioned seats in the United States House of Representatives was reduced by 1—from 19 to 18 seats. In essence, this meant that 1 incumbent was doomed to lose his or her seat through *any* redistricting plan. In accounting for this, the General Assembly had 3 options: (1) draw a district that pitted two incumbent Republicans against each other; (2) draw a district that pitted incumbent **(Footnote continued on next page...)**

Republicans made choices that favored their party (and thereby their voters). This type of partisanship has never been ruled unconstitutional (unless you are in a state, like Florida, that expressly makes it unlawful under its state constitution). Rather, it is a reasonably anticipated, if not expected, consequence of the political process.

421. The comparison, then, that is most meaningful for a constitutional analysis, is the partisan bias (by whatever metric) of the 2011 Plan when compared to the most partisan congressional plan that could be drawn, but not violate the Pennsylvania or United States Constitutions. Bringing this back to Drs. Chen, Pegden, and Warshaw, none of these experts opined as to where on their relative scales of partisanship, the line is between a constitutionally partisan map and an unconstitutionally partisan districting plan. This is the point that has bedeviled courts throughout history.

I. 2018 Pennsylvania Elections Schedule

422. Under the current election schedule, Pennsylvania's 2018 general primary election, which will include the next congressional primary, is scheduled for May 15, 2018. (Joint Stip. of Facts at ¶ 130; EBD-2 at ¶ 8.) *See* Section 603(a) of the Pennsylvania Election Code (Election Code), Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2753(a).

(continued...)

Democrats against each other; or (3) draw a district that pitted 1 incumbent Republican against 1 incumbent Democrat. The 2011 Plan reflects option 2, although the actual reasons the General Assembly made this choice are not of record. Regardless of the reasons, however, there is no constitutional imperative that mandated a different choice.

423. Under the current election schedule, the first day to circulate and file nomination petitions is February 13, 2018. (Joint Stip. of Facts at ¶ 131.) *See* Section 908 of the Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2868.

424. Under the current election schedule, the last day to circulate and file nomination petitions is March 6, 2018. (Joint Stip. of Facts at ¶ 132.) *See* Section 908 of the Election Code.

425. Under the current election schedule, the first day to circulate and file nomination papers is March 7, 2018. (Joint Stip. of Facts at ¶ 133.) *See* Section 953(b) of the Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2913(b).

426. Under the current election schedule, the last day for withdrawal by candidates who filed nomination petitions is March 21, 2018. (Joint Stip. of Facts at ¶ 134.) *See* Section 914 of the Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2874.

427. Under the current election schedule, remote military-overseas absentee ballots for the primary election must be sent by March 26, 2018. (Joint Stip. of Facts at ¶ 135.) *See* 25 Pa. C.S. § 3508(b)(1).

428. Under the current election schedule, all remaining military-overseas absentee ballots for the primary election must be sent by March 30, 2018. (Joint Stip. of Facts at ¶ 136.) *See* 25 Pa. C.S. § 3508(a)(1).

429. Under the current election schedule, the last day for voters to register before the primary election is April 16, 2018. (Joint Stip. of Facts at ¶ 137.) *See* 25 Pa. C.S. § 1326(b).

430. Under the current election schedule, the last day to apply for a civilian absentee ballot for the primary election is May 8, 2018. (Joint Stip. of Facts at ¶ 138.) *See* Section 1302.1(a) of the Election Code, Act of June 3, 1937, P.L. 1333, added by the Act of August 13, 1963, P.L. 707, *as amended*, 25 P.S. § 3146.2a(a).

431. Under the current election schedule, the last day for County Boards of Elections to receive voted civilian absentee ballots for the primary election is May 11, 2018. (Joint Stip. of Facts at ¶ 139.) *See* Section 1306(a) of the Election Code, Act of June 3, 1937, P.L. 1333, added by the Act of March 6, 1951, P.L. 707, *as amended*, 25 P.S. § 3146.6(a).

432. Under the current election schedule, the first day for voters to register after the primary election is May 16, 2018. (Joint Stip. of Facts at ¶ 140.) *See* 25 Pa. C.S. § 1326(c)(2)(iii).

433. Under the current election schedule, the last day for County Boards of Elections to receive voted military-overseas ballots for the primary election is May 22, 2018. (Joint Stip. of Facts at ¶ 141.) *See* 25 Pa. C.S. § 3511(a).

434. Under the current election schedule, the last day to circulate and file nomination papers is August 1, 2018. (Joint Stip. of Facts at ¶ 142.) *See* Consent Decree, *Hall v. Davis* (No. 84-1057, E.D. Pa., June 14, 1984).

435. Under the current election schedule, the last day for withdrawal by minor political party and political body candidates who filed nomination papers is August 8, 2018. (Joint Stip. of Facts at ¶ 143.) *See* Section 978(b) of the Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2938(b).

436. Under the current election schedule, the last day for withdrawal by candidates nominated by a political party is August 13, 2018. (Joint Stip. of Facts at ¶ 144.) *See* Section 978(a) of the Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2938(a).

437. Under the current election schedule, remote military-absentee ballots for the November general election must be sent by August 28, 2018. (Joint Stip. of Facts at ¶ 145.) *See* 25 Pa. C.S. § 3508(b)(1).

438. Under the current election schedule, all remaining military-overseas absentee ballots for the November general election must be sent by September 21, 2018. (Joint Stip. of Facts at ¶ 146.) *See* 52 U.S.C. § 20302(a)(8)(A); 25 Pa. C.S. § 3508(a)(1).

439. Under the current election schedule, the last day for voters to register before the November general election is October 9, 2018. (Joint Stip. of Facts at ¶ 147.) *See* 25 Pa. C.S. § 1326(b).

440. Under the current election schedule, the last day to apply for a civilian absentee ballot for the November general election is October 30, 2018. (Joint Stip. of Facts at ¶ 148.) *See* Section 1302.1(a) of the Election Code.

441. Under the current election schedule, the last day for County Boards of Elections to receive voted civilian absentee ballots for the November general election is November 2, 2018. (Joint Stip. of Facts at ¶ 149.) *See* Section 1306(a) of the Election Code.

442. Under the current election schedule, Pennsylvania's 2018 general election is scheduled for November 6, 2018. (Joint Stip. of Facts at ¶ 150.) *See* Article VII, Section 2 of the Pennsylvania Constitution; Section 601

of the Election Code, Act of June 3, 1937, P.L. 1333, as affected by the Act of April 28, 1978, P.L. 202, 25 P.S. § 2751.

443. Under the current election schedule, the first day for voters to register after the November general election is November 7, 2018. (Joint Stip. of Facts at ¶ 151.) *See* 25 Pa. C.S. § 1326(c)(2)(iii).

444. Under the current election schedule, the last day for County Boards of Elections to receive voted military-overseas ballots for the general election is November 13, 2018. *See* 25 Pa. C.S. § 3511(a).

445. The election deadlines set forth above are required by federal or state law. (EBD-2 at ¶ 10.)

446. In order to prepare for the earliest deadline in the 2018 election schedule, which is February 13, 2018, the first day for circulating and filing nomination petitions, it would be highly preferable to DOS to have all congressional district boundaries finalized and in place by January 23, 2018. This would give DOS 3 weeks to prepare. (EBD-2 at ¶¶ 11-12.)

447. Should there be a court order directing that a new congressional districting plan be put into place, and that congressional districting plan is not ready until after January 23, 2018, it may still be possible for the 2018 primary election to proceed as scheduled using the new plan. (EBD-2 at ¶ 13.)

448. Through a combination of internal administrative adjustments and court-ordered date changes, it would be possible to hold the primary election on the scheduled May 15, 2018 date even if a new congressional districting plan is not put into place until on or before February 20, 2018. (EBD-2 at ¶ 14.)

449. The current election schedule gives the counties 10 weeks between the last date for circulating and filing nomination petitions (currently

March 6, 2018) and the primary election date to prepare for the primary election. (EBD-2 at ¶ 15.)

450. Based on Commissioner Marks' experience, counties could fully prepare for the primary election in 6 to 8 weeks. (EBD-2 at ¶ 16.)

451. Commissioner Marks believes that the close of the nomination petitions period could be moved back 2 weeks to March 20, 2018, without compromising the elections process in any way. (EBD-2 at ¶ 17.)

452. If the Court were to order a time period for circulating and filing nomination petitions that lasted 2 weeks, instead of 3, the nomination period could start on March 6, 2018. (EBD-2 at ¶ 18.)

453. DOS would normally need 3 weeks of preparation time before the first date for the filing and circulating of nomination petitions, however, with the addition of staff and increased staff hours, it would be possible for DOS to complete its preparations in 2 weeks instead of 3. (EBD-2 at ¶¶ 19-20.)

454. Accordingly, if the first date for circulating and filing nomination petitions is moved to March 6, 2018, DOS would need to have a final congressional districting plan in place by approximately February 20, 2018. (EBD-2 at ¶ 21.)

455. Should there be a court order directing that a new congressional districting plan be put in place, and that congressional districting plan is not ready until after February 20, 2018, it would also be possible to postpone the 2018 primary election from May 15, 2018, to a date in the summer of 2018. Under this scenario, there would be 2 options: (1) the Pennsylvania Supreme Court could postpone all of the primary elections currently scheduled for May 15, 2018; or

(2) the Pennsylvania Supreme Court could postpone the congressional primary election alone. (EBD-2 at ¶¶ 22-23.)

456. Depending on the date of the postponed primary election, the date by which the new congressional districting plan would be put into place could be as late as the beginning of April 2018. (EBD-2 at ¶ 24.)

457. Postponement of the primary election in any manner would not be preferable because it would result in significant logistical challenges for county election administrators. If postponement takes place, for administrative and cost savings reasons, DOS's preferred option would be postponement of the entire primary. (EBD-2 at ¶ 25.)

458. Postponing the congressional primary alone would require the administration of 2 separate primary elections (1 for congressional seats and 1 for other positions), which would result in an additional expenditure of a significant amount of public funds. (EBD-2 at ¶ 26.)

459. The cost of holding a single primary in 2018 would be approximately $20 million. If 2 primary elections were held, each would cost approximately $20 million. (EBD-2 at ¶ 27.)

460. For each primary, Pennsylvania's 67 counties will be reimbursed a portion of the costs associated with mailing absentee ballots to certain military and overseas civilian voters and bedridden or hospitalized veterans. The other costs of the primary are paid by the counties. This is similar to the way that costs are allocated in special congressional elections. (EBD-2 at ¶ 28.)

461. DOS will make every effort to comply with any election schedule that the Pennsylvania Supreme Court puts in place. (EBD-2 at ¶ 30.)

J. Ongoing Activities for the 2018 Elections

462. Five Democratic candidates have registered with the Federal Election Commission to run in the 7th Congressional District race in 2018. (Joint Stip. of Facts at ¶ 219.)

463. Four Democratic candidates have registered with the Federal Election Commission to run in the 12th Congressional District race in 2018. (Joint Stip. of Facts at ¶ 220.)

464. Democratic candidate Chrissy Houlahan has raised $810,649.55 in her campaign for the 6th Congressional District in 2018. (Joint Stip. of Facts at ¶ 221.)

465. According to the Federal Election Commission, 1 Democratic candidate has raised over $100,000 to challenge an incumbent in the 16th Congressional District in 2018. (Joint Stip. of Facts at ¶ 222.)

466. Governor Wolf issued a Writ of Election to hold a special election for the vacancy in the 18th Congressional District on March 13, 2018. The special election in the 18th Congressional District is to fill the seat vacated by Congressman Murphy only for the duration of his term, which ends in January 2019. (Joint Stip. of Facts at ¶ 223.)

467. The special election for the existing 18th Congressional District will be held 28 days after nomination petitions begin to circulate for the election for the 18th Congressional District in November 2018. (Joint Stip. of Facts at ¶ 224.)

468. The following chart contains the names and addresses of the Republican and Democratic nominated candidates for the March 13, 2018 special election in the 18th Congressional District:

D	Conor Lamb	928 Washington Road Pittsburgh, PA 15228
R	Rick Saccone	404 Boston Hollow Road Elizabeth, PA 15037

(Joint Stip. of Facts at ¶ 156.)

469. Campaigns for members of the United States Congress start far in advance of the year of election. The existing congressional districts under the 2011 Plan have now been in effect for 3 election cycles. Intervenors work to elect their preferred candidates to the United States Congress in reliance on the existing congressional districts. Before the filing of the Petition, Intervenors did not expect that the existing congressional districts would change between the 2016 and 2018 elections. (Joint Stip. of Facts at ¶¶ 199-202; I-16 at ¶¶ 5, 17, 23; I-17 at ¶¶ 9, 26.)

470. One of the Intervenors has been performing his duties and responsibilities in connection with the 2018 congressional election as Chairman for the Monroe County Republican Committee since November 2016. Those duties and responsibilities have included, but have not been limited to, actively recruiting candidates to run against the incumbent Democratic candidate in the 17th Congressional District. (I-16 at ¶¶ 5-9.)

471. Such Intervenor has also been actively involved in election activities intended to benefit Republican congressional candidates in the 2018 elections. Those activities have included, but have not been limited to: (1) communicating with candidates and their committee representatives; (2) generating support for the candidates; and (3) reviewing and identifying issues that could affect the campaign. (I-16 at ¶ 20.)

472. Such Intervenor believes that he will be harmed if the congressional district boundaries are changed before the 2018 election because it

could negate all of the activities that he has undertaken in connection with the 2018 congressional elections. (I-16 at ¶¶ 18, 20.)

473. Another of the Intervenors has been actively involved in election activities intended to benefit her Republican candidate for the 2018 congressional elections. Those activities have included, but have not been limited to: (1) attending a statewide planning conference in December 2016; (2) attending events in support of her candidate; and (3) recruiting donors and volunteers for her candidate's campaign. Such Intervenor believes that at least some of her efforts will be lost if the congressional district boundaries are changed before the 2018 elections. (I-17 at ¶¶ 5, 8-9, 23.)

III. RECOMMENDED CONCLUSIONS OF LAW

A. Congressional Reapportionment Generally

1. Every decade, the 435 seats in the United States House of Representatives must be reapportioned among the 50 states according to the results of the U.S. Census. U.S. Const. art. I, § 2.

2. State legislatures, vested with the power, *inter alia*, to determine the "Times, Places and Manner of holding Elections for . . . Representatives," control the process of reapportionment and resulting redistricting (drawing of congressional district lines), subject to any rules that Congress may establish. U.S. Const. art. I, § 4.

3. The Pennsylvania Constitution includes express provisions that guide and limit reapportionment of the General Assembly[20] and local

[20] Reapportionment of the General Assembly is governed by Article II, Section 16 of the Pennsylvania Constitution, which provides:

(Footnote continued on next page...)

municipalities.[21] There is, however, no similar provision in the Pennsylvania Constitution with respect to congressional reapportionment.

4. Like all states, Pennsylvania must draw its congressional districts "with populations as close to perfect equality as possible." *Evenwel v. Abbott*, ___ U.S. ___, 136 S. Ct. 1120, 1124 (2016).

5. Like all states, Pennsylvania must draw its congressional districts in compliance with Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

6. While the General Assembly derives its authority over congressional redistricting from the United States Constitution and there are no explicit provisions in the Pennsylvania Constitution or any Pennsylvania statute that govern congressional reapportionment, redistricting plans nonetheless may be scrutinized under other provisions of the Pennsylvania Constitution, as any law

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(continued...)

> The Commonwealth shall be divided into fifty senatorial and two hundred three 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.

[21] Reapportionment of local municipalities is governed by Article IX, Section 11 of the Pennsylvania Constitution, which provides:

> Within the year following that in which the Federal decennial census is officially reported as required by Federal law, and at such other times as the governing body of any municipality shall deem necessary, each municipality having a governing body not entirely elected at large shall be reapportioned, by its governing body or as shall otherwise be provided by uniform law, into districts which shall be composed of compact and contiguous territory as nearly equal in population as practicable, for the purpose of describing the districts for those not elected at large.

passed by the General Assembly would be. *See Erfer v. Commonwealth*, 794 A.2d 325, 331 (Pa. 2002).

7. While many states have adopted constitutional provisions regulating reapportionment, at least one of which mandates that districts be "contiguous and compact," *see, e.g.*, Va. Const. art. II, § 6, there is no Pennsylvania constitutional provision specifically dealing with congressional reapportionment.[22]

8. In light of the Speech and Debate Clause, the General Assembly and its members cannot be compelled by the Court to explain individual lines and boundaries in the 2011 Plan. (*See* this Court's Memorandum and Order, dated November 22, 2017.)

9. The 2011 Plan is legislation passed by a majority of duly-elected members of the PA House and PA Senate from state legislative districts approved by the Pennsylvania Supreme Court, *Albert v. 2001 Legislative Reapportionment Commission*, 790 A.2d 989 (Pa. 2002), and signed into law by the duly-elected Governor of the Commonwealth.

B. Partisan Gerrymandering Generally

10. Partisan gerrymandering cases are justiciable under the United States and Pennsylvania Constitutions. *See Bandemer*, 478 U.S. at 124-27;

[22] At numerous times throughout the trial, various witnesses and parties characterized Pennsylvania's 2011 Plan as one of the most politically gerrymandered in the country. If true, the reputation can be explained by the following: (1) Pennsylvania does not have any limiting standards for the drawing of congressional districts; (2) Pennsylvania has not opted to adopt an independent, nonpartisan commission to craft a politically neutral plan; and (3) when the 2011 Plan was drawn, the voters of Pennsylvania chose single party (Republican) rule in the General Assembly and the Office of the Governor.

Erfer, 794 A.2d at 331 (citing *In re 1991 Pa. Legislative Reapportionment Comm'n*, 609 A.2d 132 (Pa. 1992) (*1991 Reapportionment*), *abrogated on other grounds by Holt v. 2011 Legislative Reapportionment Comm'n*, 38 A.3d 711 (Pa. 2012)).

11. Partisanship and political classifications are permissible considerations in the creation of congressional districts. *See Vieth*, 541 U.S. at 285 (plurality opinion) ("The Constitution clearly contemplates districting by political entities, and unsurprisingly that turns out to be root-and-branch a matter of politics." (internal citation omitted)); *id.* at 307 (Kennedy, J., concurring) (noting that "[a] determination that a gerrymander violates the law must rest on something more than the conclusion that political classifications were applied" because such classifications are "generally permissible"); *id.* at 336 (Stevens, J., dissenting) ("[P]artisanship [can] be a permissible consideration in drawing district lines, so long as it does not predominate."); *id.* at 344 (Souter, J., dissenting) ("[S]ome intent to gain political advantage is inescapable whenever political bodies devise a district plan . . . ."); *id.* at 360 (Breyer, J., dissenting) ("[T]raditional or historically based boundaries are not, and should not be, 'politics free.'"); *Hunt v. Cromartie*, 526 U.S. 541, 551 (1999) ("Our prior decisions have made clear that a jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact." (emphasis in original)); *Vera*, 517 U.S. at 1047-48 (Souter, J., dissenting) (noting that incumbency protection is traditional districting principle that is "entirely consistent" with Fourteenth Amendment); *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) ("The reality is that districting inevitably has and is intended to have substantial political consequences.").

12. There is no Pennsylvania constitutional provision that expressly prohibits partisanship in the drawing of congressional districts. *But see, e.g.*, Cal. Const. art. XXI, § 2(e) ("The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party."); Fla. Const. art. III, § 20 ("No [congressional] apportionment plan or individual [congressional] district shall be drawn with the intent to favor or disfavor a political party or an incumbent.").

13. There is no Pennsylvania statute that expressly prohibits partisanship in the drawing of congressional districts.

14. Congressional reapportionment is "the most political of legislative functions," and judicial intervention should be reserved for only the most egregious abuses of the power conferred to the General Assembly. *Erfer*, 794 A.2d at 334 (quoting *Bandemer*, 478 U.S. at 143 (plurality opinion)).

15. The question presented in a political gerrymandering case is not whether the General Assembly, in drawing congressional districts, may make decisions that favor one political party or even a particular incumbent; rather, the question is how much partisan bias is too much. *See Holt*, 38 A.3d at 745 ("It is true, of course, that redistricting has an inevitably legislative, and therefore an inevitably political, element; but, the constitutional commands and restrictions on the process exist precisely as a brake on the most overt of potential excesses and abuse."); *see also Vieth*, 541 U.S. at 344 (Souter, J., dissenting) (noting that in partisan gerrymandering context, "the issue is one of how much is too much").

C. Burden of Proof – Constitutionality of Enacted Legislation

16. Petitioners bear the heavy burden of proving that the 2011 Plan is unconstitutional. *Singer v. Sheppard*, 346 A.2d 897, 900 (Pa. 1975). There is a presumption in favor of constitutionality for all lawfully enacted legislation and "'all doubt is to be resolved in favor of sustaining the legislation.'" *Id.* (quoting *Milk Control Comm'n v. Battista*, 198 A.2d 840, 843 (Pa.), *appeal dismissed*, 379 U.S. 3 (1964)). "'An Act of Assembly will not be declared unconstitutional unless it [c]learly, palpably and [p]lainly violates the [Pennsylvania] Constitution.'" *Id.* (quoting *Daly v. Hemphill*, 191 A.2d 835, 840 (Pa. 1963)).

17. In challenging the constitutionality of the 2011 Plan, it is Petitioners' burden of establishing not that a better or fairer plan can be drawn, but rather that the 2011 Plan fails to meet constitutional requirements. *See Albert*, 790 A.2d at 995.

D. Free Expression and Association (Count I)

18. Article I, Section 7 of the Pennsylvania Constitution provides, in relevant part: "The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty."

19. Article I, Section 20 of the Pennsylvania Constitution provides: "The citizens have 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."

20. "The protections afforded by Article I, [Section] 7 . . . are distinct and firmly rooted in Pennsylvania history and experience. The provision is

an ancestor, not a stepchild, of the First Amendment." *Pap's A.M. v. City of Erie*, 812 A.2d 591, 605 (Pa. 2002) (*Pap's II*). Thus, Article I, Section 7 of the Pennsylvania Constitution "'provides protection for freedom of expression that is broader than the federal constitutional guarantee.'" *Id.* (quoting *Bureau of Prof'l and Occupational Affairs v. State Bd. of Physical Therapy*, 728 A.2d 340, 343-44 (Pa. 1999)); *see also Working Families Party v. Commonwealth*, 169 A.3d 1247, 1260 (Pa. Cmwlth. 2017) ("The Pennsylvania Constitution affords greater protection of speech and associational rights than does our Federal Constitution."). "Nevertheless, [the Pennsylvania] Supreme Court has explained that reference to 'First Amendment authority remains instructive in construing Article I, Section 7' of the Pennsylvania Constitution." *Working Families Party*, 169 A.3d at 1260 (quoting *DePaul v. Commonwealth*, 969 A.2d 536, 547 (Pa. 2009)).

21. "[W]here a party to litigation 'mounts an individual rights challenge under the Pennsylvania Constitution, the party should undertake an independent analysis' to explain why 'state constitutional doctrine should depart from the applicable federal standard.'" *Working Families Party*, 169 A.3d at 1262 (quoting *DePaul*, 696 A.2d at 541). The party advocating for the departure from the analogous federal standard should brief: "(1) the text of the Pennsylvania Constitution[;] (2) its history and Pennsylvania case law thereon[;] (3) case law from other jurisdictions[;] and (4) policy considerations, including unique issues of state and local concern." *Id.* at 1262 n.25 (citing *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991)). While Petitioners cite *Edmunds* in their post-trial filing, it does not appear that they have performed a thorough *Edmunds* analysis. Nonetheless, the Pennsylvania Supreme Court is free to conduct its constitutional analysis of Petitioners' claim that the 2011 Plan violates their rights to free

expression under Article I, Section 7 of the Pennsylvania Constitution consistently with the model set forth by *Edmunds*. *See Pap's II*, 812 A.2d at 603.

22. In *Pap's A.M. v. City of Erie*, 719 A.2d 273 (Pa. 1988) (*Pap's I*), *reversed and remanded*, 529 U.S. 277 (2000), the Pennsylvania Supreme Court concluded that a public indecency ordinance that made it a summary offense to appear in public in a "state of nudity" placed an unconstitutional burden on the right to freedom of expression guaranteed by the First Amendment to the United States Constitution. *Pap's I*, 719 A.2d at 275-76, 280. The United States Supreme Court granted certiorari to consider whether the Pennsylvania Supreme Court properly evaluated the subject ordinance's constitutionality under the First Amendment. *City of Erie v. Pap's A.M.*, 529 U.S. 277, 283 (2000). In a plurality opinion, the United States Supreme Court held that the subject ordinance was a content-neutral regulation that satisfied the four-part test set forth in *United States v. O'Brien*, 391 U.S. 367 (1968), and, therefore, did not violate the First Amendment. *Id.* at 289-302 (plurality opinion). As a result, the United States Supreme Court reversed the decision of the Pennsylvania Supreme Court and remanded the matter for the consideration of any remaining issues. *Id.* at 302.

23. On remand in *Pap's II*, the Pennsylvania Supreme Court considered whether the same public indecency ordinance violated the right to freedom of expression guaranteed by Article I, Section 7 of the Pennsylvania Constitution. *Pap's II*, 812 A.2d at 593. Ultimately, the Pennsylvania Supreme Court concluded that the subject ordinance was unconstitutional because "the legitimate governmental goals in [the] case [could] be achieved by less restrictive means, without burdening the right to expression guaranteed" by Article I, Section 7 of the Pennsylvania Constitution. *Id.* at 613. Essentially, the

Pennsylvania Supreme Court issued the same holding in *Pap's II* that it had issued in *Pap's I*, but rested its decision on Article I, Section 7 of the Pennsylvania Constitution, not the First Amendment. *Id.* In reaching its decision under the Pennsylvania Constitution, the Pennsylvania Supreme Court noted:

> We are left, then, with a circumstance where we must decide a Pennsylvania constitutional question, but the governing federal law, to which we ordinarily would look for insight and comparison, has been fluid and changing and still is not entirely clear. As a matter of policy, Pennsylvania citizens should not have the contours of their fundamental rights under our charter rendered uncertain, unknowable, or changeable, while the [United States] Supreme Court struggles to articulate a standard to govern a similar federal question. There is an entirely different jurisprudential and constitutional imperative at work when this Court, which is the final word on the meaning of our own charter in a properly joined case or controversy, is charged with the duty to render a judgment. In addition, it is a settled principle of Pennsylvania jurisprudence that a provision of the Pennsylvania Constitution may, in appropriate circumstances, provide broader protections than are afforded by its federal counterpart.

Id. at 611.

24. The rights of free expression and free association are fundamental rights. *See Schneider v. New Jersey*, 308 U.S. 147, 161 (1939); *Working Families Party*, 169 A.3d at 1260.

25. In *Working Families Party*, the Commonwealth Court analyzed, *inter alia*, whether the anti-fusion provisions of the Election Code violated the petitioners' speech and associational rights under Article I, Sections 7 and 20 of the Pennsylvania Constitution. *Working Families Party*, 169 A.3d at 1260-64. In

so doing, the Commonwealth Court relied upon the model set forth in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997).[23] *Id.* at 1260-62. The Commonwealth Court concluded that in deciding whether speech and associational rights have been violated, "we weigh the character and magnitude of the burden imposed by the provisions against the interests proffered to justify that burden." *Id.* at 1260. Quoting the United States Supreme Court in *Timmons*, the Commonwealth Court observed that "regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a [s]tate's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" *Id.* at 1262 (quoting *Timmons*, 520 U.S. at 358).

26. The Pennsylvania Supreme Court has acknowledged that the United States Supreme Court has "'consistently recognized that retaliation by public officials against the exercise of First Amendment rights is itself a violation of the First Amendment.'" *Uniontown Newspapers, Inc. v. Roberts*, 839 A.2d 185, 198 (Pa. 2003) (quoting *McBride v. Village of Michiana*, 100 F.3d 457, 460-61 (6th Cir. 1996), *abrogated on other grounds as recognized by Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 724-25 (6th Cir. 2010)). In *Uniontown Newspapers*, the Pennsylvania Supreme Court held:

> To prove a claim of retaliation, a plaintiff must establish: (1) the plaintiff was engaged in a constitutionally protected activity; (2) the defendant's action caused the plaintiff to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in

[23] In *Working Families Party*, the Commonwealth Court determined that the petitioners had failed to perform the *Edmunds* analysis. *Working Families Party*, 169 A.3d at 1262 n.25.

> that activity; and (3) the adverse action was motivated at least in part as a response to the exercise of the plaintiff's constitutional rights.

Id.

27. No Pennsylvania courts have analyzed a partisan gerrymandering challenge to congressional districts under Article I, Sections 7 and 20 of the Pennsylvania Constitution.

28. A majority of the United States Supreme Court Justices have not analyzed a partisan gerrymandering challenge to congressional districts under the First Amendment to the United States Constitution.

29. The 2011 Plan does not preclude Petitioners from freely associating with a political party or a candidate, nor does it preclude Petitioners from exercising their right to vote for the candidate of their choice.

30. What Petitioners seek in Count I is in essence a declaration, in the name of free speech and association, that under Article I, Sections 7 and 20 of the Pennsylvania Constitution, Petitioners are entitled to a nonpartisan, neutral redistricting process free of any and all partisan considerations. Such a right is not apparent in the Pennsylvania Constitution or in the history of gerrymandering decisions in Pennsylvania and throughout the country.

31. Moreover, as courts have uniformly recognized that partisanship can and does play a role in congressional reapportionment cases, particularly in a state, like Pennsylvania, that leaves the process in the control of a partisan state legislature, Petitioners, in order to prevail, must articulate a judicially manageable standard by which a court can determine that partisanship crossed the line into an unconstitutional infringement on Petitioners' free speech and associational rights. *See Holt*, 38 A.3d at 745; *see also Vieth*, 541 U.S. at 315

(Kennedy, J., concurring) ("Of course, all this depends first on courts' [sic] having available a manageable standard by which to measure the effect of the apportionment and so to conclude that the State did impose a burden or restriction on the rights of a party's voters."). Petitioners have not presented a judicially manageable standard.

32. Assuming a free speech and association retaliation claim is cognizable under the Pennsylvania Constitution with respect to political gerrymandering claims, to maintain the action Petitioners bear the burden of proving: (1) that Petitioners were "engaged in a constitutionally protected activity"; (2) that the General Assembly caused Petitioners "to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that activity"; and (3) that "the adverse action was motivated at least in part as a response to the exercise of" Petitioners' constitutional rights. *Uniontown Newspapers*, 839 A.2d at 198.

33. Of these elements, Petitioners satisfy the first.

34. With respect to the second element, Petitioners all continue to participate in the political process. Indeed, they have voted in congressional races since the implementation of the 2011 Plan. The Court assumes that each Petitioner is a "person of [at least] ordinary firmness." Accordingly, Petitioners have failed to prove the second element of their claim.

35. With respect to the third element, Petitioners have similarly failed to adduce evidence that the General Assembly passed the 2011 Plan with any motive to retaliate against Petitioners (or others who voted for Democratic candidates in any particular election) for exercising their right to vote.

36. Intent to favor one party's candidates over another should not be conflated with motive to retaliate against voters for casting their votes for a particular candidate in a prior election. There is no record evidence to suggest that in voting for the 2011 Plan, the General Assembly, or any particular member thereof, was motivated by a desire to punish or retaliate against Pennsylvanians who voted for Democratic candidates. Indeed, it is difficult to assign a singular and dastardly motive to a branch of government made up of 253 individual members elected from distinct districts with distinct constituencies and divided party affiliations.

37. On final passage of the 2011 Plan in the PA House, of the 197 members voting, 136 voted in the affirmative, with some Republican members voting in the negative and 36 Democratic members voting in the affirmative. Given the negative Republican votes, the 2011 Plan would not have passed the PA House without Democratic support. The fact that some Democrats voted in favor of the 2011 Plan further militates against a finding or conclusion that the General Assembly passed the 2011 Plan, in whole or in part, as a response to actual votes cast by Democrats in prior elections.

38. Based on the evidence presented and the current state of the law, Petitioners have failed to meet their burden of proving that the 2011 Plan clearly, plainly, and palpably violates Petitioners' rights under Article I, Sections 7 and 20 of the Pennsylvania Constitution.

E. Equal Protection Guarantee and Free and Equal Elections Clause (Count II)

39. Article I, Section 5 of the Pennsylvania Constitution, which is commonly referred to as the Free and Equal Elections Clause, provides: "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."

40. The Pennsylvania Supreme Court has defined the Free and Equal Elections Clause as follows:

> "[E]lections are free and equal within the meaning of the Constitution when they are public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, . . . and when no constitutional right of the qualified elector is subverted or denied him."

1991 Reapportionment, 609 A.2d at 142 (alteration and omission in original) (quoting *City Council of City of Bethlehem v. Marcincin*, 515 A.2d 1320, 1323 (Pa. 1986)).

41. In the context of partisan gerrymandering, the Free and Equal Elections Clause provides no greater protection than the United States Constitution's Equal Protection Clause, and the Pennsylvania Supreme Court has considered claims brought under the Free and Equal Elections Clause and the equal protection provisions of Article I, Sections 1 and 26 of the Pennsylvania Constitution using the same standard. *See Erfer*, 794 A.2d at 332 ("[W]e reject Petitioners' claim that the Pennsylvania Constitution's free and equal elections clause provides further protection to the right to vote than does the Equal Protection Clause.").

42. Article I, Section 1 of the Pennsylvania Constitution provides: "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."

43. Article I, Section 26 of the Pennsylvania Constitution provides: "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."

44. Article I, Sections 1 and 26 of the Pennsylvania Constitution together constitute what is commonly referred to as the equal protection guarantee (Equal Protection Guarantee).

45. In the context of partisan gerrymandering, the Pennsylvania Supreme Court has stated that the Equal Protection Guarantee is coterminous with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Erfer*, 794 A.2d at 332 (citing *Love v. Borough of Stroudsburg*, 597 A.2d 1137, 1139 (Pa. 1991)). This holding is consistent with decades of Pennsylvania Supreme Court precedent holding that the "equal protection provisions of the Pennsylvania Constitution are analyzed . . . under the same standards used by the United States Supreme Court when reviewing equal protection claims under the Fourteenth Amendment to the United States Constitution." *Love*, 597 A.2d at 1139; *see Commonwealth v. Albert*, 758 A.2d 1149, 1151 (Pa. 2000) (recognizing Pennsylvania Supreme Court's holding that equal protection provisions under Pennsylvania Constitution and United States Constitution are analyzed using same standards); *James v. Se. Pa. Transp. Auth.*, 477 A.2d 1302, 1305 (Pa. 1984) (noting that claims made under Fourteenth Amendment to United States Constitution and Article I, Section 26 of Pennsylvania Constitution "are in essence the same"); *Laudenberger v. Port Auth.*

of Allegheny Cty., 436 A.2d 147, 155 n.13 (Pa. 1981) (stating that equal protection claims under United States Constitution and Pennsylvania Constitution "may be reviewed simultaneously, for the meaning and purpose of the two are sufficiently similar to warrant like treatment"), *appeal dismissed*, 456 U.S. 940 (1982); *Baltimore & Ohio R.R. Co. v. Commonwealth.*, 334 A.2d 636, 643 (Pa.) (stating that equal protection under Pennsylvania Constitution and United States Constitution "may be considered together, for the content of the two provisions is not significantly different"), *appeal dismissed*, 423 U.S. 806 (1975). Since *Erfer*, Pennsylvania courts have continued to uphold the Pennsylvania Supreme Court's precedent regarding the coterminous nature of the Equal Protection Guarantee and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Kramer v. Workers' Comp. Appeal Bd. (Rite Aid Corp.)*, 883 A.2d 518, 532 (Pa. 2005); *Zauflik v. Pennsbury Sch. Dist.*, 72 A.3d 773, 789 n.24 (Pa. Cmwlth. 2013), *aff'd*, 104 A.3d 1096 (Pa. 2014); *Doe v. Miller*, 886 A.2d 310, 314 n.9 (Pa. Cmwlth. 2005), *aff'd*, 901 A.2d 495 (Pa. 2006).

46. In *1991 Reapportionment*, the Pennsylvania Supreme Court adopted the three-part test set forth by the *Bandemer* plurality as a means to establish a prima facie case of partisan gerrymandering. *1991 Reapportionment*, 609 A.2d at 142.

47. In *Erfer*, the Pennsylvania Supreme Court noted that in determining whether a specific legislation constituted a partisan gerrymander in violation of the Pennsylvania Constitution, the Pennsylvania Supreme Court would "continue the precedent enunciated in *1991 Reapportionment* and apply the test set forth by the *Bandemer* plurality." *Erfer*, 794 A.2d at 331-32. By "carefully parsing out the plurality's language," the Pennsylvania Supreme Court identified

"a simple . . . recitation of the test." *Id.* at 332. "[A] plaintiff raising a gerrymandering claim must establish that there was intentional discrimination against an identifiable political group and that there was an actual discriminatory effect on that group." *Id.* In order to establish discriminatory effect, the plaintiff must show: (1) "that the identifiable group has been, or is projected to be, disadvantaged at the polls"; and (2) "that by being disadvantaged at the polls, the identifiable group will 'lack . . . political power and [be denied] fair representation.'" *Id.* (omission and alteration in original) (quoting *Bandemer*, 478 U.S. at 139).

48. In *Vieth*, a majority of the United States Supreme Court Justices concluded that the test developed by the *Bandemer* plurality was misguided and unworkable. *Vieth*, 541 U.S. at 283-84 (plurality opinion); *id.* at 307-08 (Kennedy, J., concurring). As a result, the *Bandemer* plurality test is no longer used to determine whether a partisan gerrymander violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Common Cause v. Rucho*, 240 F. Supp. 3d 376, 387 (M.D.N.C. 2017) (concluding "the effects test proposed by the *Bandemer* plurality is unworkable, and, therefore, no longer controlling"); *Whitford*, 218 F. Supp. 3d at 877 (holding that, as a result of *Vieth*, "the *specific test* for political gerrymandering set forth in *Bandemer* no longer is good law").

49. While *Erfer* may have been abrogated by the decision of a majority of the United States Supreme Court Justices in *Vieth*, there is no Pennsylvania Supreme Court precedent that specifically abandons the principles set forth in *Erfer*. As *Erfer* is the only Pennsylvania authority that has been developed to evaluate whether a specific congressional redistricting plan is an

unconstitutional partisan gerrymander under the Equal Protection Guarantee of the Pennsylvania Constitution, this Court will apply the *Erfer* test to the facts of this case.

50. Intentional discrimination is "not . . . difficult to show since '[a]s long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended.'" *Erfer*, 794 A.2d at 332 (quoting *Bandemer*, 478 U.S. at 129).

51. In light of the standard articulated in *Erfer*, and based on the evidence adduced at trial, Petitioners have established intentional discrimination, in that the 2011 Plan was intentionally drawn so as to grant Republican candidates an advantage in certain districts within the Commonwealth.

52. Although the 2011 Plan was drawn to give Republican candidates an advantage in certain districts within the Commonwealth, Petitioners have failed to meet their burden of showing that the 2011 Plan equated to intentional discrimination against an identifiable political group.

53. Voters who are likely to vote Democratic (or Republican) in a particular district based on the candidates or issues, regardless of the voters' political affiliation, are not an identifiable political group for purposes of the Equal Protection Guarantee under the Pennsylvania Constitution.

54. Even assuming, however, that Petitioners satisfy the first prong of the *Erfer/Bandemer* test, Petitioners must also show that the 2011 Plan works an actual discriminatory effect by showing: (1) "that the identifiable group has been, or is projected to be, disadvantaged at the polls"; and (2) "that by being disadvantaged at the polls, the identifiable group will 'lack . . . political power and [be denied] fair representation.'" *Erfer*, 794 A.2d at 332 (omission and alteration

in original) (quoting *Bandemer*, 478 U.S. at 139). With respect to the latter, Petitioners must establish that they have "effectively been shut out of the political process." *Id.* at 334.

55. This second prong is "unquestionably an onerous standard," in recognition of the state legislature's prerogative to craft congressional reapportionment plans. *Id.* at 333-34.

56. Petitioners have failed to meet their burden under the second *Erfer* prong for the following reasons:

a. While Petitioners contend that Republican candidates who prevail in congressional districts do not represent their particular views on issues important to them and will effectively ignore them, the Court refuses to make such a broad finding based on Petitioners' feelings. There is no constitutional provision that creates a right in voters to their elected official of choice. As a matter of law, an elected member of Congress represents his or her district in its entirety, even those within the district who do not share his or her views. This Court will not presume that members of Congress represent only a portion of their constituents simply because some constituents have different priorities and views on controversial issues.

b. At least 3 of the 18 congressional districts in the 2011 Plan are safe Democratic seats. *See Erfer*, 794 A.2d at 334.

c. Petitioners can, and still do, campaign for, financially support, and vote for their candidate of choice in every congressional election.

d. Petitioners can still exercise their right to protest and attempt to influence public opinion in their congressional district and throughout the Commonwealth.

e. Perhaps most importantly, Petitioners and likeminded voters from across the Commonwealth can exercise their political power at the polls to elect legislators and a Governor who will address and remedy any unfairness in the 2011 Plan through the next reapportionment following the 2020 U.S. Census.

57. Based on the evidence presented and the current state of the law, Petitioners have failed to meet their burden of proving that the 2011 Plan clearly, plainly, and palpably violates Petitioners' rights under the Free and Equal Elections Clause and Equal Protection Guarantee of the Pennsylvania Constitution.

F. Summary of Key Findings and Conclusions

58. Petitioners have established by a preponderance of the evidence that partisan considerations are evident in the enacted 2011 Plan, such that the 2011 Plan overall favors Republican Party candidates in certain congressional districts.

59. Petitioners have established by a preponderance of the evidence that Republican candidates have consistently won 13 out of 18 congressional seats in every congressional election under the 2011 Plan.

60. Petitioners have established by a preponderance of the evidence that by using neutral, or nonpartisan, criteria *only*, it is possible to draw alternative maps that are not as favorable to Republican candidates as is the 2011 Plan.

61. While Petitioners characterize the level of partisanship evident in the 2011 Plan as "excessive" and "unfair," Petitioners have not articulated a

judicially manageable standard by which this Court can discern whether the 2011 Plan crosses the line between permissible partisan considerations and unconstitutional partisan gerrymandering under the Pennsylvania Constitution.[24]

62. Petitioners do not contend that the 2011 Plan fails to comply with all provisions of the United States and Pennsylvania Constitutions specifically applicable to congressional reapportionment.

63. A lot can and has been said about the 2011 Plan, much of which is unflattering and yet justified.

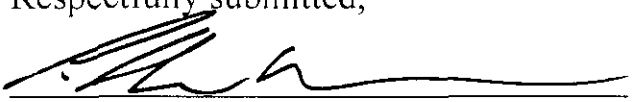
64. Petitioners, however, have failed to meet their burden of proving that the 2011 Plan, as a piece of legislation, clearly, plainly, and palpably violates the Pennsylvania Constitution. For the judiciary, this should be the end of the inquiry.

65. The Court based its conclusions of law on the evidence presented and the current state of the law. Pending before the United States Supreme Court are *Gill* and *Benisek v. Lamone* (U.S. Supreme Court, No. 17-333, jurisdictional statement filed September 1, 2017). In *Gill*, the United States Supreme Court is considering the merits of a split three-judge panel decision by the United States District Court for the Western District of Wisconsin, declaring that the legislatively enacted redistricting plan for state legislative districts violates the

[24] Some unanswered questions that arise based on Petitioners' presentation include: (1) what is a constitutionally permissible efficiency gap; (2) how many districts must be competitive in order for a plan to pass constitutional muster (realizing that a competitive district would result in a skewed efficiency gap); (3) how is a "competitive" district defined; (4) how is a "fair" district defined; and (5) must a plan guarantee a minimum number of congressional seats in favor of one party or another to be constitutional.

First and Fourteenth Amendments to the United States Constitution.[25] In *Benisek*, the United States Supreme Court is considering the merits of a split three-judge panel decision by the United States District Court for Maryland, a political gerrymandering case raising claims under the First Amendment to the United States Constitution, including a claim of retaliation.

Respectfully submitted,



P. Kevin Brobson, Judge
Commonwealth Court of Pennsylvania

[25] By opinion dated June 19, 2017, a divided Supreme Court stayed the district court's judgment in *Whitford*, pending its disposition of the appeal. *Gill*, ___ U.S. ___, 137 S. Ct. 2289 (2017).

Exhibit "A"

Exhibits Admitted into Evidence at Trial Without Objection

Exhibit No.	Description
Petitioners' Ex. 2	Jowei Chen, Ph.D. - Curriculum Vitae
Petitioners' Ex. 3	Chart: Example of a Simulated Districting Plan from Simulation Set 1 (Adhering to Traditional Districting Criteria) [Figure 1 of Chen Report]
Petitioners' Ex. 4	Chart: County and Municipality Splits of 500 Simulated Plans Following Only Traditional Districting Criteria (No Consideration of Incumbent Protection) [Figure 3 of Chen Report]
Petitioners' Ex. 5	Chart: Compactness of 500 Simulated Plans Following Only Traditional Districting Criteria (No Consideration of Incumbent Protection) [Figure 4 of Chen Report]
Petitioners' Ex. 6	Chart: Partisan Breakdown of 500 Simulated Plans Following Only Traditional Districting Criteria [Figure 2 of Chen Report]
Petitioners' Ex. 7	Chart: Example of a Simulated Districting Plan from Simulation Set 2 (Adhering to Traditional Districting Criteria and Protecting 17 Incumbents) [Figure 1A of Chen Report]
Petitioners' Ex. 8	Chart: County and Municipality Splits of 500 Simulated Plans Following Traditional Districting Criteria and Protecting 17 incumbents [Figure 6 of Chen Report]
Petitioners' Ex. 9	Chart: Compactness of 500 Simulated Plans Following Traditional Districting Criteria and Protecting 17 Incumbents [Figure 7 to Chen Report]
Petitioners' Ex. 10	Chart: Partisan Breakdown of 500 Simulated Plans Following Traditional Districting Criteria and Protecting 17 Incumbents [Figure 8 of Chen Report]
Petitioners' Ex. 11	Table: Paired Incumbents under Simulation Set 2 (Simulations Protecting 17 of 19 Incumbents While Following Traditional Districting Criteria) [Table 3 to Chen Report]
Petitioners' Ex. 12	Table: Summary of Two Sets of Simulated Districting Plans and Enacted Act 131 Plan [Table 1 of Chen Report]
Petitioners' Ex. 13	Racial and ethnic composition of each of the 18 Congressional Districts in Pennsylvania's current enacted congressional plan [Appendix A of Chen Report]
Petitioners' Ex. 14	Racial and ethnic composition of each of the 19 Congressional Districts in the 2002 Congressional Plan [Appendix B of Chen Report]

Petitioners' Ex. 15	Chart: Partisan Breakdown of 205 Simulated Plans Following Only Traditional Districting Criteria (No Incumbent Protection) Containing One District with Black VAP over 56.8% and 54 Simulated Plans Following Traditional Directing Criteria and Protecting 17 Incumbents Containing One District with Black VAP over 56.8% [Figure 10 of Chen Report]
Petitioners' Ex. 16	Chart: Mean-Median Gap of 500 Simulated Plans Following Only Traditional Districting Criteria (No Consideration of Incumbent Protection) [Figure 5 of Chen Report]
Petitioners' Ex. 17	Chart: Mean-Median Gap of 500 Simulated Plans Following Traditional Districting Criteria and Protecting 17 Incumbents [Figure 9 of Chen Report]
Petitioners' Ex. 18	Table: Petitioners' Districts in Act 131 and in Simulation Sets 1 and 2 Districting Plans Percent of Simulated Plans Placing Petitioner into a Democratic District [Table 4 of Chen Report]
Petitioners' Ex. 19	Chart: Partisan Breakdown Using 2012-2016 Elections Data of 500 Simulated Plans Following Only Traditional Districting Criteria (No Consideration of Incumbent Protection) and 205 Simulated Plans Following Only Traditional Districting Criteria (No Incumbent Protection) and Containing One District with Black VAP over 56.8% [Figure C1 of Chen Report]
Petitioners' Ex. 20	Chart: Partisan Breakdown Using 2012-2016 Elections Data of 500 Simulated Plans Following Traditional Districting Criteria and Protecting 17 Incumbents and 54 Simulated Plans Following Traditional Districting Criteria and Protecting 17 Incumbents Containing One District with Black VAP over 56.8% [Figure C2 of Chen Report]
Petitioners' Ex. 25	Chen & Chen Replication Code
Petitioners' Ex. 26	Chen & Cottrell Replication Code
Petitioners' Ex. 34	Analysis of McCarty PVI Data
Petitioners' Ex. 35	Expert Report of Christopher Warshaw, Ph.D.
Petitioners' Ex. 36	Christopher Warshaw, Ph.D. - Curriculum Vitae
Petitioners' Ex. 37	Chart - Distribution of Efficiency Gaps in States with More than 6 Seats: 1972-2016 (Figure 1 to Warshaw Report)
Petitioners' Ex. 38	Chart - Historical Trajectory of the Efficiency Gap (Figure 2 to Warshaw Report)
Petitioners' Ex. 39	Chart - Durability of Efficiency Gap. (Figure 3 to Warshaw

	Report)
Petitioners' Ex. 40	Chart - Historical Trajectory of the Efficiency Gap in Pennsylvania (Figure 4 to Warshaw Report)
Petitioners' Ex. 41	Table - Results in 2012 Pennsylvania Congressional Elections (Table 1 to Warshaw Report)
Petitioners' Ex. 42	Chart - Efficiency Gap in Pennsylvania Relative to Other States (Figure 5 to Warshaw Report)
Petitioners' Ex. 43	Chart - Difference in the Proportion of the Time that Members of Each Party Vote Conservatively (Figure 6 to Warshaw Report)
Petitioners' Ex. 44	Chart - The Average Ideology of Members of Each Party (Figure 7 to Warshaw Report)
Petitioners' Ex. 45	Chart - The Growth in Polarization Between Members of the Two Parties (Figure 8 to Warshaw Report)
Petitioners' Ex. 46	Chart - Polarization Among Pennsylvania Representatives (Figure 9 to Warshaw Report)
Petitioners' Ex. 47	Chart - Proportion of Non-Unanimous Votes Where Representatives from Pennsylvania Vote Together (Figure 10 to Warshaw Report)
Petitioners' Ex. 48	Table – Polarization in Pennsylvania's Delegation: The Percentage of Time PA Representatives Vote with a Majority of Their Party on All Votes and Non- Unanimous Votes (Table 2 to Warshaw Report)
Petitioners' Ex. 49	Table – Effect of Efficiency Gap on Average Legislator Ideology in Each State (Table 3 to Warshaw Report)
Petitioners' Ex. 50	Chart – Association Between Efficiency Gap and the Congruence Between Public Opinion and Legislators' ACA Repeal Vote (Figure 11 to Warshaw Report)
Petitioners' Ex. 51	Chart – Association Between Efficiency Gap and Citizens' Trust in Their Representative in Congress (Figure 12 to Warshaw Report)
Petitioners' Ex. 52	Chart – Validation of the Efficiency Gap Measure (Figure A1 to Warshaw Report)
Petitioners' Ex. 53	Expert Report of John J. Kennedy, Ph.D.
Petitioners' Ex. 54	John J. Kennedy, Ph.D. - Curriculum Vitae
Petitioners' Ex. 56	Table – Split Counties and Municipalities by Decade [Table B to Kennedy Report]
Petitioners' Ex. 57	Table – Number of Municipalities Split at the Block Level by Decade [Table C to Kennedy Report]

Petitioners' Ex. 68	Map – Pennsylvania Congressional Districts (Current Map) [Map 6 to Kennedy Report]
Petitioners' Ex. 70	Map – 1st Congressional District (red/blue)
Petitioners' Ex. 73	Map – 3rd Congressional District (red/blue)
Petitioners' Ex. 75	Map – 4th Congressional District (red/blue)
Petitioners' Ex. 78	Map – 6th Congressional District (red/blue)
Petitioners' Ex. 81	Map – Pennsylvania 7th District (Creed's Seafood and Steak House)
Petitioners' Ex. 82	Map – Pennsylvania 7th District (Brandywine Hospital)
Petitioners' Ex. 83	Map – 7th Congressional District (red/blue)
Petitioners' Ex. 93	Map – 14th Congressional District (red/blue)
Petitioners' Ex. 95	Map – 15th Congressional District (red/blue)
Petitioners' Ex. 97	Map – 16th Congressional District (red/blue)
Petitioners' Ex. 99	Map – 16th Congressional District (Reed's Mulch Products and Degler's Service Center)
Petitioners' Ex. 102	Map – 17th Congressional District (red/blue)
Petitioners' Ex. 117	Expert Report of Wesley Pegden, Ph.D.
Petitioners' Ex. 118	Wesley Pegden, Ph.D. - Curriculum Vitae (Exhibit A to Pegden Report)
Petitioners' Ex. 119	Article – Chikina, Maria et al. "Assessing significance in a Markov chain without mixing" (Exhibit B to Pegden Report)
Petitioners' Ex. 121	Figure 2 to Pegden Report
Petitioners' Ex. 122	Table (page 8 of Pegden Report)
Petitioners' Ex. 123	Pegden Theorem
Petitioners' Ex. 162	McCarty PVI Estimation Errors in Simulated Districts
Petitioners' Ex. 163	Designations from the Deposition of Carmen Febo San Miguel

Petitioners' Ex. 164	Designations from the Deposition of Donald Lancaster
Petitioners' Ex. 165	Designations from the Deposition of Gretchen Brandt
Petitioners' Ex. 166	Designations from the Deposition of John Capowski
Petitioners' Ex. 167	Designations from the Deposition of Jordi Comas
Petitioners' Ex. 168	Designations from the Deposition of John Greiner
Petitioners' Ex. 169	Designations from the Deposition of James Solomon
Petitioners' Ex. 170	Designations from the Deposition of Lisa Isaacs
Petitioners' Ex. 171	Designations from the Deposition of Lorraine Petrosky
Petitioners' Ex. 172	Designations from the Deposition of Mark Lichty
Petitioners' Ex. 173	Designations from the Deposition of Priscilla McNulty
Petitioners' Ex. 174	Designations from the Deposition of Richard Mantell
Petitioners' Ex. 175	Designations from the Deposition of Robert McKinstry
Petitioners' Ex. 176	Designations from the Deposition of Robert Smith
Petitioners' Ex. 177	Designations from the Deposition of Thomas Ulrich
Petitioners' Ex. 178	Designations from the Trial Testimony of State Senator Andrew E. Dinniman in the *Agre* case
Petitioners' Ex. 179	Designations from the Deposition of State Representative Gregory Vitali
Petitioners' Ex. 266	"Does Gerrymandering Cause Polarization?"
Legislative Respondents' Ex. 10	Wendy K. Tam Cho, Ph.D. CV
Legislative Respondents' Ex. 11	Wendy K. Tam Cho, Ph.D. Expert Report
Legislative Respondents' Ex.	Wendy K. Tam Cho, Ph.D. Report – Figures and Tables

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Legislative Respondents' Ex. 16	Nolan McCarty, Ph.D. CV
Legislative Respondents' Ex. 17	Nolan McCarty, Ph.D. Expert Report
Legislative Respondents' Ex. 18	Nolan McCarty, Ph.D. Figures and Tables
Legislative Respondents' Ex. 19	Senate Dem. Congressional Plan Map
Lt. Governor Stack's Ex. 11	Affidavit of Lt. Governor Stack
Lt. Governor Stack's Ex. 12	Untitled Document [**ADMITTED FOR ILLUSTRATIVE PURPOSES ONLY**]
Governor Wolf, Acting Secretary Torres, and Commissioner Marks' Ex. 2	Affidavit of Commissioner Marks
Intervenors' Ex. 2	Voter Registration Statistics
Intervenors' Ex. 16	Affidavit of Intervenor Witness Thomas Whitehead
Intervenors' Ex. 17	Affidavit of Intervenor Witness Carol Lynne Ryan

Exhibit "B"

Exhibits Entered into Evidence at Trial Upon Stipulation of the Parties (Attached to Joint Stipulation of Facts Filed 12/8/17)

Exhibit No.	Description
Joint Exhibit 1	SB 1249, PN 1520 (Form of Bill as introduced to the PA Senate on September 14, 2011)
Joint Exhibit 2	SB 1249, PN 1862 (Form of Bill as amended on December 14, 2011 in the PA Senate State Government Committee)
Joint Exhibit 3	SB 1249, PN 1869 (Form of Bill as rewritten in the PA Senate Appropriations Committee on December 14, 2011)
Joint Exhibit 4	SB 1249, PN 1869 (Form of Bill as reported out by the PA House Appropriations Committee on December 20, 2011)
Joint Exhibit 5	2011 Plan
Joint Exhibit 6	Map of the 1st Congressional District
Joint Exhibit 7	Map of the 2nd Congressional District
Joint Exhibit 8	Map of the 3rd Congressional District
Joint Exhibit 9	Map of the 4th Congressional District
Joint Exhibit 10	Map of the 5th Congressional District
Joint Exhibit 11	Map of the 6th Congressional District
Joint Exhibit 12	Map of the 7th Congressional District
Joint Exhibit 13	Map of the 8th Congressional District
Joint Exhibit 14	Map of the 9th Congressional District
Joint Exhibit 15	Map of the 10th Congressional District
Joint Exhibit 16	Map of the 11th Congressional District
Joint Exhibit 17	Map of the 12th Congressional District

Joint Exhibit 18	Map of the 13th Congressional District
Joint Exhibit 19	Map of the 14th Congressional District
Joint Exhibit 20	Map of the 15th Congressional District
Joint Exhibit 21	Map of the 16th Congressional District
Joint Exhibit 22	Map of the 17th Congressional District
Joint Exhibit 23	Map of the 18th Congressional District
Joint Exhibit 24	The Evolution of Pennsylvania's 7th District
Joint Exhibit 25	List of Representatives for Each Congressional District from 2005 to Present
Joint Exhibit 26	Pennsylvania Congressional District Maps for 1943, 1951, 1962, 1972, 1982, 1992, 2002, and 2011 from the Pennsylvania Manual

EXHIBIT 2

Pennsylvania General Assembly

http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2011&sind=0&body=S&type=B&bn=1249

02/27/2018 10:23 PM

Bill Information - History

Senate Bill 1249; Regular Session 2011-2012

Sponsors: PILEGGI, SCARNATI and McILHINNEY

Printer's No.(PN): 1869* , 1862, 1520

Short Title: An Act apportioning this Commonwealth into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census.

Actions:

PN 1520	Referred to STATE GOVERNMENT, Sept. 14, 2011
	Reported as committed, Dec. 7, 2011
	First consideration, Dec. 7, 2011
	Second consideration, Dec. 12, 2011
	Re-committed to STATE GOVERNMENT, Dec. 12, 2011
PN 1862	Re-reported as amended, Dec. 14, 2011
	Re-referred to APPROPRIATIONS, Dec. 14, 2011
PN 1869	Re-reported as amended, Dec. 14, 2011
	Third consideration and final passage, Dec. 14, 2011 (26-24)
	(Remarks see Senate Journal Page 1398), Dec. 14, 2011
	In the House
	Referred to STATE GOVERNMENT, Dec. 14, 2011
	Reported as committed, Dec. 15, 2011
	First consideration, Dec. 15, 2011
	Laid on the table, Dec. 15, 2011
	Removed from table, Dec. 15, 2011
	Second consideration, Dec. 19, 2011
	Re-referred to APPROPRIATIONS, Dec. 19, 2011
	(Remarks see House Journal Page 2679), Dec. 19, 2011
	Re-reported as committed, Dec. 20, 2011
	Third consideration and final passage, Dec. 20, 2011 (136-61)
	(Remarks see House Journal Page 2728), Dec. 20, 2011
	Signed in Senate, Dec. 22, 2011
	Signed in House, Dec. 20, 2011
	Presented to the Governor, Dec. 22, 2011
	Approved by the Governor, Dec. 22, 2011
	Act No. 131

* denotes current Printer's Number

How to Read a Bill About PDF Documents

EXHIBIT 3

PRINTER'S NO. 1520

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1249 Session of 2011

INTRODUCED BY PILEGGI, SCARNATI AND McILHINNEY, SEPTEMBER 14, 2011

REFERRED TO STATE GOVERNMENT, SEPTEMBER 14, 2011

AN ACT

Apportioning this Commonwealth into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Congressional Redistricting Act of 2011.

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Secretary." The Secretary of the Commonwealth.

CHAPTER 3

ESTABLISHMENT OF CONGRESSIONAL DISTRICTS

Section 301. Congressional districts.

For the purpose of electing representatives of the people of Pennsylvania to serve in the House of Representatives in the Congress of the United States, this Commonwealth shall be divided into 18 districts which shall have one Congressman each, as follows:

(1) The First District is composed of a portion of this Commonwealth.

(2) The Second District is composed of a portion of this Commonwealth.

(3) The Third District is composed of a portion of this Commonwealth.

(4) The Fourth District is composed of a portion of this Commonwealth.

(5) The Fifth District is composed of a portion of this Commonwealth.

(6) The Sixth District is composed of a portion of this Commonwealth.

(7) The Seventh District is composed of a portion of this Commonwealth.

(8) The Eighth District is composed of a portion of this Commonwealth.

(9) The Ninth District is composed of a portion of this Commonwealth.

(10) The Tenth District is composed of a portion of this Commonwealth.

(11) The Eleventh District is composed of a portion of this Commonwealth.

(12) The Twelfth District is composed of a portion of this Commonwealth.

(13) The Thirteenth District is composed of a portion of this Commonwealth.

(14) The Fourteenth District is composed of a portion of this Commonwealth.

(15) The Fifteenth District is composed of a portion of this Commonwealth.

(16) The Sixteenth District is composed of a portion of this Commonwealth.

(17) The Seventeenth District is composed of a portion of this Commonwealth.

(18) The Eighteenth District is composed of a portion of this Commonwealth.

Section 302. Current officeholders and vacancies.

(a) Current officeholders.--The members of Congress now in office shall continue in the office until the expiration of their respective terms.

(b) Vacancies.--Vacancies now existing or happening after the passage of this chapter and before the commencement of the terms of the members elected at the election of 2012 shall be filled for the unexpired terms from the districts established under section 301.

Section 303. Missed political subdivision.

In the event any political subdivision or part thereof should be omitted in the description of the congressional districts, the political subdivision or part thereof shall be included as a part of the congressional district which completely surrounds it. Should any omitted political subdivision or part thereof be not completely surrounded by one congressional district, it shall become a part of that congressional district to which it is contiguous, or if there are two or more such contiguous

districts, it shall become a part of that congressional district contiguous thereto which has the least population.

Section 304. Duty to publish notice of redistricting.

The secretary shall publish notice of the congressional districts as established at least once in at least one newspaper of general circulation in each county in which such newspapers are published. The notice shall contain legal descriptions for all congressional districts in the county in which the publication is made. The notice shall also state the population of the districts having the smallest and largest populations and the percentage variation of such districts from the average population for congressional districts.

CHAPTER 15

MISCELLANEOUS PROVISIONS

Section 1510. Effective date.

This act shall take effect immediately.

EXHIBIT 4

PRIOR PRINTER'S NOS. 1520, 1862 PRINTER'S NO. 1869

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1249 Session of 2011

INTRODUCED BY PILEGGI, SCARNATI AND McILHINNEY, SEPTEMBER 14, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, DECEMBER 14, 2011

AN ACT

Apportioning this Commonwealth into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Congressional Redistricting Act of 2011.

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Secretary." The Secretary of the Commonwealth.

CHAPTER 3

ESTABLISHMENT OF CONGRESSIONAL DISTRICTS

Section 301. Congressional districts.

For the purpose of electing representatives of the people of Pennsylvania to serve in the House of Representatives in the Congress of the United States, this Commonwealth shall be divided into 18 districts which shall have one Congressman each, as follows:

~~(1) The First District is composed of part of Delaware County consisting of the city of Chester part, Wards 01 part, Divisions 01, 02, 04, 05 and 08, 02, 03, 04, 05, 06, 07, 08, 09, 10 and 11 and the townships of Chester, Darby part, Wards 01, 02 and 03 part, Division 01, Nether Providence, Ridley part, Ward 01 part, Division 02, Tinicum part, Wards 01, 02 and 04 and Upper Darby part, Districts 02 part, Division 01, 04, 05 part, Divisions 01, 02 and 05, 06 and 07 and the boroughs of Collingdale, Colwyn, Darby, East Lansdowne, Eddystone, Folcroft, Glenolden part, Precincts 02, 03, 04 and 05, Lansdowne, Millbourne, Rose Valley, Sharon Hill, Swarthmore, Upland and Yeadon and part of Philadelphia County consisting of the city of Philadelphia part, Wards 01, 02, 03, 05, 07, 14, 15 part, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 16, 17, 18 and 19, 18, 19, 20 part, Divisions 01, 02, 03, 04, 05, 06, 08, 10 and 11, 25, 26, 31, 33, 34, 37 part, Divisions 17, 18, 19 and 20, 39, 40, 41, 45, 47 part, Division 01, 54 part, Divisions 03, 14, 15, 16, 19, 20 and 21, 55 part, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28 and 29, 57 part, Division 18, 62 part, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25 and 26, 64 part, Division 12 and 65.~~

~~(2) The Second District is composed of part of Montgomery County consisting of the township of Lower Merion part, Wards 01, 02 part, Divisions 01, 02 all blocks except 1000, 1001, 1002 and 1021 of tract 204800 and 03, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13 and 14 and the borough of Narberth and part of Philadelphia County consisting of the city of Philadelphia part, Wards 04, 06, 08, 09, 10, 11, 12, 13, 15 part, Division 15, 16, 17, 20 part, Divisions 07 and 09, 21, 22, 24, 27, 28, 29, 30, 32, 36, 37 part, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16 and 21, 38, 43, 44, 46, 47 part, Divisions 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13 and 14, 48, 49, 50, 51, 52, 59, 60 and 61 part, Divisions 01, 02, 06, 07, 17, 21, 22, 23 and 24.~~

~~(3) The Third District is composed of all of Armstrong County; all of Butler County; part of Clarion County consisting of the townships of Brady, Licking, Madison, Monroe, Perry, Piney all blocks except 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3013, 3014, 3015, 3021, 3024, 3026, 3030, 3031, 3032, 3037, 3038, 3039, 3044, 3046, 3056, 3136 and 3137 of tract 160500, Porter, Redbank and Toby and the boroughs of Callensburg, East Brady, Hawthorn, New Bethlehem, Rimersburg and Sligo; part of Crawford County consisting of the city of Meadville and the townships of Athens, Beaver, Bloomfield, Cambridge, Conneaut, Cussewago, East Fairfield, East Fallowfield, East Mead, Fairfield, Greenwood, Hayfield, North Shenango, Oil Creek, Pine, Randolph, Richmond, Rockdale, Rome, Sadsbury, South Shenango, Sparta, Spring, Steuben, Summerhill, Summit, Troy, Union, Venango, Vernon, Wayne, West Fallowfield, West Mead,~~

~~West Shenango and Woodcock and the boroughs of Blooming Valley, Cambridge Springs, Centerville, Cochranton, Conneaut Lake, Conneautville, Hydetown, Linesville, Saegertown, Spartansburg, Springboro, Townville, Venango and Woodcock; part of Erie County consisting of the city of Erie and the townships of Conneaut, Elk Creek, Fairview, Girard, Lake Erie, Millcreek part, Districts 03, 04, 05, 06, 07, 08, 09, 10, 13, 14, 15, 16, 17, 22 and 24 and Springfield and the boroughs of Albion, Cranesville, Girard, Lake City and Platea; part of Lawrence County consisting of the city of New Castle and the townships of Hickory, Mahoning, Neshannock, North Beaver, Plain Grove, Pulaski, Scott, Shenango, Slippery Rock, Taylor, Union, Washington and Wilmington and the boroughs of Bessemer, New Wilmington, S.N.P.J., South New Castle and Volant and all of Mercer County.~~

~~(4) The Fourth District is composed of all of Adams County; part of Cumberland County consisting of the townships of East Pennsboro, Hampden, Lower allen, Silver Spring and Upper allen part, Precincts 01, 02, 03, 04, 05, 07, 08 and 10 and the boroughs of Camp Hill, Lemoyne, Mechanicsburg part, Ward 02 part, Division 02, New Cumberland, Shiremanstown and Wormleysburg; part of Dauphin County consisting of the city of Harrisburg part, Wards 01 part, Division 02, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14 and 15 and the township of Susquehanna part, Wards 01 and 03 only blocks 4009, 4010, 4027, 4029, 4037 and 4038 of tract 022000 and all of YORK County.~~

~~(5) The Fifth District is composed of all of Cameron County; all of Centre County; part of Clarion County consisting of the townships of Ashland, Beaver, Clarion, Elk,~~

~~Farmington, Highland, Knox, Limestone, Millcreek, Paint, Piney only blocks 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3013, 3014, 3015, 3021, 3024, 3026, 3030, 3031, 3032, 3037, 3038, 3039, 3044, 3046, 3056, 3136 and 3137 of tract 160500, Richland, Salem and Washington and the boroughs of Clarion, Emlenton Clarion County Portion, Foxburg, Knox, Shippenville, St. Petersburg and Strattanville; all of Clearfield County; all of Clinton County; part of Crawford County consisting of the city of Titusville; all of Elk County; part of Erie County consisting of the city of Corry and the townships of Amity, Concord, Franklin, Greene, Greenfield, Harborcreek, Lawrence Park, Leboeuf, McKean, Millcreek part, Districts 01, 02, 11, 12, 18, 19, 20, 21 and 23, North East, Summit, Union, Venango, Washington, Waterford and Wayne and the boroughs of Edinboro, Elgin, McKean, Mill Village, North East, Union City, Waterford, Wattsburg and Wesleyville; all of Forest County; part of Huntingdon County consisting of the townships of Barree, Brady, Franklin, Henderson, Jackson, Juniata, Logan, Miller, Morris, Oneida, Penn all blocks except 2102 of tract 950600, Porter, Shirley part, Districts Mount Union and Shirley, Smithfield, Spruce Creek, Union, Walker, Warriors Mark and West and the boroughs of Alexandria, Birmingham, Huntingdon, Mapleton, Mill Creek, Mount Union, Petersburg and Shirleysburg; all of Jefferson County; all of McKean County; all of Potter County; part of Tioga County consisting of the townships of Chatham, Clymer, Gaines and Shippen all blocks except 2016, 2017, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2105, 2106, 2107, 2108, 2109, 2110, 2116, 2132, 2133, 2134 and 2209 of tract 950900; all of Venango County~~

~~and all of Warren County.~~

~~(6) The Sixth District is composed of part of Berks County consisting of the townships of Alsace, Bern, Colebrookdale, Cumru part, Districts 01 all blocks except 1000, 1001, 1003, 1004, 1005, 1006, 1007, 1018 and 1039 of tract 002600, 04, 06 and 07, District, Exeter, Heidelberg, Hereford part, District 02, Lower Alsace part, District 02, Lower Heidelberg, Maidencreek, Marion, Muhlenberg part, Districts 02, 03, 05, 06, 07, 08 and 09, North Heidelberg, Ontelaunee, Penn, Pike, Richmond, Rockland, Ruscombmanor, South Heidelberg, Spring part, Districts 05, 07 and 08 and Washington and the boroughs of Bally, Bechtelsville, Bernville, Birdsboro, Boyertown, Fleetwood, Kenhorst, Laureldale part, District 01 all blocks except 4034, 4039 and 4045 of tract 012800, Leesport, Robesonia, Shillington, St. Lawrence, Wernersville, Womelsdorf and Wyomissing part, Districts 01, 02, 04 and 05; part of Chester County consisting of the townships of Caln part, Districts 01 and 04, Charlestown, East Bradford part, Districts North and South part, Division 01, East Brandywine, East Caln, East Coventry, East Goshen, East Nantmeal, East Pikeland, East Vincent, East Whiteland, Easttown, North Coventry, Schuylkill, South Coventry, Thornbury, Tredyffrin, Upper Uwchlan, Uwchlan, West Bradford part, Precincts 01, 02 and 03, West Goshen, West Pikeland, West Vincent, West Whiteland, Westtown and Willistown and the boroughs of Downingtown, Malvern, Phoenixville, Spring City and West Chester; part of Lebanon County consisting of the city of Lebanon part, Wards 01, 02, 04, 05, 07, 08, 09 and 10 and the townships of Heidelberg, Jackson, Millcreek, North Lebanon part, District~

~~EAST only block 2039 of tract 002702, South Lebanon and West Cornwall and the boroughs of Cornwall, Myerstown and Richland and part of Montgomery County consisting of the townships of Douglass, Limerick, Lower Pottsgrove, Lower Providence, New Hanover, Perkiomen part, Districts 01 all blocks except 1045, 1046, 1047, 1048, 1057, 1059, 1061 and 1065 of tract 206501 and 02, Upper Hanover part, District 03, Upper Pottsgrove, Upper Providence, West Norriton part, Districts 01 part, Division 01, 02 part, Division 01 and 03 and West Pottsgrove and the boroughs of Collegeville, East Greenville, Pennsburg, Pottstown, Red Hill, Royersford, Schwenksville and Trappe.~~

~~(7) The Seventh District is composed of part of Berks County consisting of the townships of Amity, Brecknock, Caernarvon, Cumru part, Districts 02, 03 and 05, Douglass, Earl, Oley, Robeson, Spring part, Districts 01, 06 and 11 and Union and the boroughs of Mohnton and New Morgan; part of Chester County consisting of the townships of Birmingham, Caln part, District 03, East Bradford part, District South part, Division 02, Highland, Honey Brook, Kennett part, Precincts 01, 02 all blocks except 1003, 1004, 1005 and 1007 of tract 303301 and 04, London Britain, Londonderry, New Garden, Newlin, Penn, Pennsbury part, Districts North part, Division 02 and South, Pocopson, Sadsbury part, District North, Upper Oxford, Wallace, Warwick, West Bradford part, Precincts 04 and 05, West Brandywine, West Caln, West Fallowfield, West Nantmeal and West Sadsbury and the boroughs of Atglen, Elverson and Honey Brook; part of Delaware County consisting of the city of Chester part, Ward 01 part, Divisions 03, 06 and 07 and the townships of Aston, Bethel, Chadds Ford, Concord, Darby part, Wards 03 part, Division 02,~~

~~04 and 05, Edgmont, Haverford, Lower Chichester, Marple, Middletown, Newtown, Radnor, Ridley part, Wards 01 part, Divisions 01 and 03, 02, 03, 04, 05, 06, 07, 08 and 09, Springfield, Thornbury, Tinicum part, Wards 03 and 05, Upper Chichester, Upper Darby part, Districts 01, 02 part, Divisions 02, 03, 04, 05, 06 and 07, 03 and 05 part, Divisions 03, 04, 06, 07, 08 and 09 and Upper Providence and the boroughs of Aldan, Brookhaven, Chester Heights, Clifton Heights, Glenolden part, Precincts 01 and 06, Marcus Hook, Media, Morton, Norwood, Parkside, Prospect Park, Ridley Park, Rutledge and Trainer; part of Lancaster County consisting of the townships of Bart, Colerain, Leacock, Paradise, Sadsbury and Salisbury and the borough of Christiana and part of Montgomery County consisting of the townships of East Norriton part, District 01 part, Divisions 01, 03 and 04, Horsham part, Districts 02 part, Divisions 02 all blocks except 2006 and 2027 of tract 200506, 03 and 04, 03 part, Divisions 03 and 05 and 04 part, Divisions 01, 02 and 03, Lower Gwynedd part, Districts 01 part, Divisions 02 and 03 and 02 part, Division 01, Perkiomen part, District 01 only blocks 1045, 1046, 1047, 1048, 1057, 1059, 1061 and 1065 of tract 206501, Plymouth part, Districts 01 part, Division 01, 02 part, Divisions 01, 02 and 03A and 03 part, Division 01, Skippack, Springfield part, Districts 03, 06 and 07 part, Division 02, Towamencin, Upper Dublin part, Districts 02 part, Division 01, 04 part, Division 01, 05 part, Division 01, 06 part, Division 02 and 07 part, Divisions 01 and 02, Upper Gwynedd part, Districts 01, 02, 04, 05, 06 and 07, Upper Merion part, Districts Belmont part, Divisions 02, 04 and 05, Gulph part, Division 02 and Roberts, West Norriton~~

~~part, Districts 01 part, Division 02, 02 part, Division 02 and 04, Whitemarsh part, Districts East and Middle part, Division 05, Whitpain part, Districts 01, 02, 03, 05, 06, 07, 08, 11 and 12 and Worcester.~~

~~(8) The Eighth District is composed of all of Bucks County and part of Montgomery County consisting of the townships of Franconia, Hatfield all blocks except 2006 and 2027 of tract 200506, Lower Frederick, Lower Salford, Marlborough, Salford, Upper Frederick, Upper Hanover part, Districts 01 and 02 and Upper Salford and the boroughs of Green Lane, Hatfield, Souderton and Telford Montgomery County Portion.~~

~~(9) The Ninth District is composed of all of Bedford County; all of Blair County; part of Cambria County consisting of the townships of allegheny, Barr part, Districts North and South only blocks 3001 and 3002 of tract 011800, Chest, Clearfield, Cresson, Dean, East Carroll part, District North, Elder, Gallitzin, Munster, Reade, Susquehanna, West Carroll and White and the boroughs of Ashville, Chest Springs, Cresson, Gallitzin, Hastings, Loretto, Northern Cambria part, Wards 01, 02, 03 only block 3026 of tract 011800, 04 and 05, Patton, Sankertown and Tunnelhill Cambria County Portion; all of Fayette County; all of Franklin County; all of Fulton County; part of Greene County consisting of the townships of Cumberland, Dunkard, Greene, Jefferson, Monongahela and Morgan part, Districts Chart/t.grdn and Mather and the boroughs of Carmichaels, Clarksville, Greensboro, Jefferson and Rices Landing; part of Huntingdon County consisting of the townships of Carbon, Cass, Clay, Cromwell, Dublin, Hopewell, Lincoln, Penn only~~

~~block 2102 of tract 950600, Shirley part, District Valley Pt., Springfield, Tell, Todd and Wood and the boroughs of Broad Top City, Cassville, Coalmont, Dudley, Marklesburg, Orbisonia, Rockhill, Saltillo, Shade Gap and Three Springs; all of Indiana County; part of Somerset County consisting of the townships of Addison, allegheny, Brothersvalley, Elk Lick, Fairhope, Greenville, Larimer, Lower Turkeyfoot, Northampton, Southampton, Stonycreek and Summit and the boroughs of Addison, Berlin, Callimont, Confluence, Garrett, Indian Lake, Meyersdale, New Baltimore, Salisbury, Shanksville, Ursina and Wellersburg; part of Washington County consisting of the city of Monongahela and the townships of Carroll, East Bethlehem and Fallowfield part, Districts 01, 02 all blocks except 1030 of tract 781700, 03 and 04, and the boroughs of allenport, Bentleyville, California, Centerville, Charleroi, Coal Center, Donora, Dunlevy, Elco, Long Branch, New Eagle, North Charleroi, Roscoe, Speers, Stockdale, Twilight and West Brownsville and part of Westmoreland County consisting of the city of Monessen and the borough of North Belle Vernon.~~

~~(10) The Tenth District is composed of all of Bradford County; all of Juniata County; part of LackAwanna County consisting of the townships of Abington, Benton, Carbondale part, Districts Northeast and South, Clifton, Covington, Elmhurst, Fell, Glenburn, Greenfield, Jefferson, La Plume, Madison, Newton, North Abington, Ransom, Roaring Brook, Scott, South Abington and West Abington and the boroughs of Archbald part, Wards 02 and 03, Clarks Green, Clarks Summit, Dalton, Moscow, Olyphant part, Wards 03 part, Division 02 all blocks except 1025 of tract 111400 and 04, Throop part, Ward~~

~~04 and Vandling; all of Lycoming County; all of Mifflin County; part of Monroe County consisting of the townships of Barrett, Jackson, Paradise, Pocono, Price and Stroud part, Districts 02, 03 and 04 and the boroughs of East Stroudsburg, Mount Pocono and Stroudsburg; part of Northumberland County consisting of the townships of Delaware, East Chillisquaque, Lewis, Point, Turbot and West Chillisquaque and the boroughs of McEwensville, Milton, Northumberland, Turbotville and Watsontown; part of Perry County consisting of the townships of Buffalo, Centre, Greenwood, Howe, Jackson, Juniata, Liverpool, Miller, North East Madison, Oliver, Saville, South West Madison, Toboyne, Tuscarora, Tyrone and Watts and the boroughs of Blain, Bloomfield, Landisburg, Liverpool, Millerstown, New Buffalo, Newport and Riverside only blocks 2032, 2035, 2043, 2100, 2102, 2103, 3037, 3038, 3039, 3043, 3050 and 3051 of tract 080700; all of Pike County; all of Snyder County; all of Sullivan County; all of Susquehanna County; part of Tioga County consisting of the townships of Bloss, Brookfield, Charleston, Covington, Deerfield, Delmar, Duncan, Elk, Farmington, Hamilton, Jackson, Lawrence, Liberty, Middlebury, Morris, Nelson, Osceola, Putnam, Richmond, Rutland, Shippen only blocks 2016, 2017, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2105, 2106, 2107, 2108, 2109, 2110, 2116, 2132, 2133, 2134 and 2209 of tract 950900, Sullivan, Tioga, Union, Ward and Westfield and the boroughs of Blossburg, Elkland, Knoxville, Lawrenceville, Liberty, Mansfield, Roseville, Tioga, Wellsboro and Westfield; all of Union County and all of Wayne County.~~

~~(11) The Eleventh District is composed of part of Carbon County consisting of the townships of Banks, Kidder,~~

~~Lausanne, Lehigh, Packer and Penn Forest and the boroughs of Beaver Meadows, East Side and Weatherly; all of Columbia County; part of Cumberland County consisting of the townships of Cooke, Dickinson, Hopewell, Lower Frankford, Lower Mifflin, Middlesex, Monroe, North Middleton, North Newton, Penn, Shippensburg, South Middleton, South Newton, Southampton, Upper allen part, Precincts 06 and 09, Upper Frankford, Upper Mifflin and West Pennsboro and the boroughs of Carlisle, Mechanicsburg part, Wards 01, 02 part, Division 01, 03, 04 and 05, Mount Holly Springs, Newburg, Newville and Shippensburg Cumberland County Portion; part of Dauphin County consisting of the city of Harrisburg part, Ward 01 part, Divisions 01 and 03 and the townships of Halifax, Jackson, Jefferson, Lower Paxton, Lower Swatara, Lykens, Middle Paxton, Mifflin, Reed, Rush, Susquehanna part, Wards 02, 03 all blocks except 4009, 4010, 4027, 4029, 4037 and 4038 of tract 022000, 04, 05, 06, 07, 08 and 09, Swatara, Upper Paxton, Washington, Wayne, West Hanover part, District 01, Wiconisco and Williams and the boroughs of Berrysburg, Dauphin, Elizabethville, Gratz, Halifax, Highspire, Lykens, Millersburg, Paxtang, Penbrook, Pillow, Steelton and Williamstown; part of Luzerne County consisting of the cities of Hazleton and Nanticoke and the townships of Bear Creek, Black Creek, Buck, Butler, Conyngham, Dallas, Dennison, Dorrance, Exeter, Fairmount, Fairview, Foster, Franklin, Hanover, Hazle, Hollenback, Hunlock, Huntington, Jackson, Kingston, Lake, Lehman, Nescopeck, Newport, Plymouth, Rice, Ross, Salem, Slocum, Sugarloaf, Union and Wright and the boroughs of Ashley, Bear Creek Village, Conyngham, Courtdale, Dallas, Edwardsville, Forty Fort, Freeland, Harveys Lake,~~

~~Jeddo, Kingston, Larksville, Laurel Run, Luzerne, Nescopeck, New Columbus, Nuangola, Penn Lake Park, Plymouth, Pringle, Shickshinny, Sugar Notch, Swoyersville, Warrior Run, West Hazleton and White Haven; all of Montour County; part of Northumberland County consisting of the cities of Shamokin and Sunbury and the townships of Coal, East Cameron, Jackson, Jordan, Little Mahanoy, Lower Augusta, Lower Mahanoy, Mount Carmel, Ralpho, Rockefeller, Rush, Shamokin, Upper Augusta, Upper Mahanoy, Washington, West Cameron and Zerbe and the boroughs of Herndon, Kulpmont, Marion Heights, Mount Carmel, Riverside all blocks except 2032, 2035, 2043, 2100, 2102, 2103, 3037, 3038, 3039, 3043, 3050 and 3051 of tract 080700 and Snydertown; part of Perry County consisting of the townships of Carroll, Penn, Rye, Spring and Wheatfield and the boroughs of Duncannon and Marysville and all of Wyoming County.~~

~~(12) The Twelfth District is composed of part of Allegheny County consisting of the townships of Aleppo, Fawn, Frazer, Hampton, Harrison part, Wards 01 part, Divisions 02 and 03, 03, 04 and 05 part, Division 02, Indiana, Kilbuck, Marshall, McCandless, O'Hara, Ohio, Pine, Reserve, Richland, Ross, Shaler and West Deer and the boroughs of Aspinwall, Bell Acres, Bradford Woods, Fox Chapel, Franklin Park, Glen Osborne, Haysville, Monroeville part, Wards 03 part, Divisions 01 and 04 and 04 part, Division 03, Plum, Sewickley, Sewickley Heights, Sewickley Hills and West View; all of Beaver County; part of Cambria County consisting of the city of Johnstown and the townships of Adams, Barr part, Districts North and South all blocks except 3001 and 3002 of tract 011800, Blacklick, Cambria, Conemaugh, Croyle, East~~

~~Carroll part, District South, East Taylor, Jackson, Lower Yoder, Middle Taylor, Northern Cambria part, Ward 03 only block 3026 of tract 011800, Portage, Richland, Stonycreek, Summerhill, Upper Yoder, Washington and West Taylor and the boroughs of Brownstown, Carrolltown, Cassandra, Daisytown, Dale, East Conemaugh, Ebensburg, Ehrenfeld, Ferndale, Franklin, Geistown, Lilly, Lorain, Nanty Glo, Portage, Scalp Level, South Fork, Southmont, Summerhill, Vintondale, Westmont and Wilmore; part of Lawrence County consisting of the townships of Little Beaver, Perry and Wayne and the boroughs of Ellport, Ellwood City Lawrence County Portion, Enon Valley, New Beaver and Wampum; part of Somerset County consisting of the townships of Black, Conemaugh, Jefferson, Jenner, Lincoln, Middlecreek, Milford, Ogle, Paint, Quemahoning, Shade, Somerset and Upper Turkeyfoot and the boroughs of Benson, Boswell, Casselman, Central City, Hooversville, Jennerstown, New Centerville, Paint, Rockwood, Seven Springs Somerset County Portion, Somerset, Stoystown and Windber and part of Westmoreland County consisting of the city of Lower Burrell and the townships of allegheny, Bell, Derry, Fairfield, Loyalhanna, Salem, St. Clair, Upper Burrell and Washington and the boroughs of Avonmore, Bolivar, Delmont, Derry, East Vandergrift, Export, Hyde Park, Murrysville, New Alexandria, New Florence, Oklahoma, Seward, Vandergrift and West Leechburg.~~

~~(13) The Thirteenth District is composed of part of Montgomery County consisting of the townships of Abington, Cheltenham, East Norriton part, Districts 01 part, Division 02 and 02, Hatfield part, District 05 part, Division 02 only block 3006 of tract 200704, Horsham part, Districts 01, 02~~

~~part, Divisions 01 and 02 only blocks 2006 and 2027 of tract 200506, 03 part, Divisions 01, 02 and 04 and 04 part, Division 04, Lower Gwynedd part, Districts 01 part, Divisions 01 and 04 and 02 part, Division 02, Lower Merion part, Ward 02 part, Division 02 only blocks 1000, 1001, 1002 and 1021 of tract 204800, Lower Moreland, Montgomery, Plymouth part, Districts 01 part, Division 02, 02 part, Divisions 03B and 03C, 03 part, Divisions 02 and 03 and 04, Springfield part, Districts 01, 02, 04, 05 and 07 part, Division 01, Upper Dublin part, Districts 01, 02 part, Divisions 02 and 03, 03, 04 part, Divisions 02 and 03, 05 part, Divisions 01, 02 and 03, 06 part, Divisions 01, 03A and 03B and 07 part, Division 03, Upper Gwynedd part, District 03, Upper Merion part, Districts Belmont part, Divisions 01 and 03, Candlebrook, Gulph part, Division 01, King, Swedeland and Swedesburg, Upper Moreland, Whitemarsh part, Districts Middle part, Divisions 01, 02, 03 and 04 and West and Whitpain part, Districts 04, 09 and 10 and the boroughs of Ambler, Bridgeport, Bryn Athyn, Conshohocken, Hatboro, Jenkintown, Lansdale, Norristown, North Wales, Rockledge and West Conshohocken and part of Philadelphia County consisting of the city of Philadelphia part, Wards 23, 35, 42, 53, 54 part, Divisions 01, 02, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 17, 18 and 22, 55 part, Division 24, 56, 57 part, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28, 58, 61 part, Divisions 03, 04, 05, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 25, 26, 27 and 28, 62 part, Divisions 10 and 20, 63, 64 part, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 15, 16, 17 and 18 and 66.~~

~~(14) The Fourteenth District is composed of part of Allegheny County consisting of the cities of Clairton, Duquesne, McKeesport and Pittsburgh and the townships of Baldwin, East Deer, Harmar, Harrison part, Wards 01 part, Division 01, 02 and 05 part, Division 01, Kennedy, Neville, North Versailles, Penn Hills, Robinson part, Districts 03 and 05, Springdale, Stowe and Wilkins and the boroughs of Avalon, Baldwin, Bellevue, Ben Avon, Ben Avon Heights, Blawnox, Brackenridge, Braddock, Braddock Hills, Brentwood, Chalfant, Cheswick, Churchill, Coraopolis, Crafton, Dormont, Dravosburg, East McKeesport, East Pittsburgh, Edgewood, Emsworth, Etna, Forest Hills, Glassport, Glenfield, Green Tree, Homestead, Ingram, Liberty, Lincoln, McKees Rocks, Millvale, Monroeville part, Wards 01, 02 part, Division 02, 03 part, Division 03, 05 part, Divisions 01, 02 and 04, 06 and 07, Mount Oliver, Munhall, North Braddock, Oakmont, Pitcairn, Port Vue, Rankin, Sharpsburg, Springdale, Swissvale, Tarentum, Trafford allegheny County Portion, Turtle Creek, Verona, Versailles, Wall, West Homestead, West Mifflin, Whitaker, White Oak, Whitehall part, Districts 01 only blocks 2006, 2008 and 2009 of tract 477200, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15 and 16 Wilkinsburg and Wilmerding and part of Westmoreland County consisting of the cities of Arnold and New Kensington.~~

~~(15) The Fifteenth District is composed of part of BERKS County consisting of the townships of Albany, Bethel, Centre, Greenwich, Hereford part, District 01, Jefferson, Longswamp, Maxatawny, Perry, Tilden, Tulpehocken, Upper Bern, Upper Tulpehocken and Windsor and the boroughs of Centerport, Hamburg, Kutztown, Lenhartsville, Lyons, Shoemakersville,~~

~~Strausstown and Topton; part of Dauphin County consisting of the townships of Conewago, Derry, East Hanover, Londonderry, South Hanover and West Hanover part, Districts 02, 03 and 04 and the boroughs of Hummelstown, Middletown and Royalton; part of Lebanon County consisting of the city of Lebanon part, Wards 03 and 06 and the townships of Annville, Bethel, East Hanover, North Annville, North Cornwall, North Lebanon part, Districts East all blocks except 2039 of tract 002702, Middle and West, North Londonderry, South Annville, South Londonderry, Swatara, Union and West Lebanon and the boroughs of Cleona, Jonestown, Mount Gretna and Palmyra; all of Lehigh County and part of Northampton County consisting of the city of Bethlehem Northampton County Portion part, Wards 01, 02, 03, 04, 05, 06, 07, 08, 09, 14, 15, 16 and 17 blocks 1026, 1123, 2018 and 2055 of tract 011300 and the townships of allen, Bushkill, East allen, Hanover, Lehigh, Lower Nazareth, Lower Saucon, Moore, Plainfield part, Districts Belfast, Kesslersville and Plainfield Church, Upper Nazareth part, District West and Williams and the boroughs of Bath, Chapman, Hellertown, North Catasauqua, Northampton and Walnutport.~~

~~(16) The Sixteenth District is composed of part of Berks County consisting of the city of Reading and the townships of Cumru part, District 01 only blocks 1000, 1001, 1003, 1004, 1005, 1006, 1007, 1018 and 1039 of tract 002600, Lower Alsace part, District 01, Muhlenberg part, Districts 01 and 04 and Spring part, Districts 02, 03, 04, 09, 10 and 12 and the boroughs of Adamstown Berks County Portion, Laureldale part, Districts 01 only blocks 4034, 4039 and 4045 of tract 012800 and 02, Mount Penn, Sinking Spring, West Reading and Wyomissing part, District 03; part of Chester County~~

~~consisting of the city of Coatesville and the townships of Caln part, District 02, East Fallowfield, East Marlborough, East Nottingham, Elk, Franklin, Kennett part, Precinct 02 only blocks 1003, 1004, 1005 and 1007 of tract 303301 and 03, London Grove, Lower Oxford, New London, Pennsbury part, District North part, Division 01, Sadsbury part, District South, Valley, West Marlborough and West Nottingham and the boroughs of Avondale, Kennett Square, Modena, Oxford, Parkesburg, South Coatesville and West Grove and part of Lancaster County consisting of the city of Lancaster and the townships of Brecknock, Caernarvon, Clay, Conestoga, Conoy, Drumore, Earl, East Cocalico, East Donegal, East Drumore, East Earl, East Hempfield, East Lampeter, Eden, Elizabeth, Ephrata, Fulton, Lancaster, Little Britain, Manheim, Manor, Martic, Mount Joy, Penn, Pequea, Providence, Rapho, Strasburg, Upper Leacock, Warwick, West Cocalico, West Donegal, West Earl, West Hempfield and West Lampeter and the boroughs of Adamstown Lancaster County Portion, Akron, Columbia, Denver, East Petersburg, Elizabethtown, Ephrata, Lititz, Manheim, Marietta, Millersville, Mount Joy, Mountville, New Holland, Quarryville, Strasburg and Terre Hill.~~

~~(17) The Seventeenth District is composed of part of Carbon County consisting of the townships of East Penn, Franklin, Lower Towamensing, Mahoning and Towamensing and the boroughs of Bowmanstown, Jim Thorpe, Lansford, Lehighton, Nesquehoning, Palmerton, Parryville, Summit Hill and Weissport; part of Lackawanna County consisting of the cities of Carbondale and Scranton and the townships of Carbondale part, District Northwest, Spring Brook and Thornhurst and the~~

~~boroughs of Archbald part, Wards 01 and 04, Blakely, Dickson City, Dunmore, Jermyn, Jessup, Mayfield, Moosic, Old Forge, Olyphant part, Wards 01, 02 and 03 part, Divisions 01 and 02 only block 1025 of tract 111400, Taylor and Throop part, Wards 01, 02 and 03; part of Luzerne County consisting of the cities of Pittston and Wilkes-Barre and the townships of Jenkins, Pittston, Plains and Wilkes-Barre and the boroughs of Avoca, Dupont, Duryea, Exeter, Hughestown, Laflin, West Pittston, West Wyoming, Wyoming and Yatesville; part of Monroe County consisting of the townships of Chestnuthill, Coolbaugh, Eldred, Hamilton, Middle Smithfield, Polk, Ross, Smithfield, Stroud part, Districts 01, 05, 06 and 07, Tobyhanna and Tunkhannock and the borough of Delaware Water Gap; part of Northampton County consisting of the cities of Bethlehem Northampton County Portion part, Ward 17 all except blocks 1026, 1123, 2018 and 2055 of tract 011300 and Easton and the townships of Bethlehem, Forks, Lower Mount Bethel, Palmer, Plainfield part, District Delabole, Upper Mount Bethel, Upper Nazareth part, District East and Washington and the boroughs of Bangor, East Bangor, Freemansburg, Glendon, Nazareth, Pen Argyl, Portland, Roseto, Stockertown, Tatamy, West Easton, Wilson and Wind Gap and all of Schuylkill County.~~

~~(18) The Eighteenth District is composed of part of Allegheny County consisting of the townships of Collier, Crescent, Elizabeth, Findlay, Forward, Leet, Moon, Mount Lebanon, North Fayette, Robinson part, Districts 01, 02, 04, 06, 07, 08 and 09, Scott, South Fayette, South Park, South Versailles and Upper St. Clair and the boroughs of Bethel Park, Bridgeville, Carnegie, Castle Shannon, Edgeworth,~~

~~Elizabeth, Heidelberg, Jefferson Hills, Leetsdale, McDonald allegheny County Portion, Monroeville part, Wards 02 part, Divisions 01 and 03, 03 part, Division 02, 04 part, Divisions 01 and 02 and 05 part, Division 03, Oakdale, Pennsbury Village, Pleasant Hills, Rosslyn Farms, Thornburg, West Elizabeth, and Whitehall part, Districts 01 all blocks except 2006, 2008 and 2009 of tract 477200, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15 and 16; part of Greene County consisting of the townships of Aleppo, Center, Franklin, Freeport, Gilmore, Gray, Jackson, Morgan part, District Lippencott, Morris, Perry, Richhill, Springhill, Washington, Wayne and Whiteley and the borough of Waynesburg; part of Washington County consisting of the city of Washington and the townships of Amwell, Blaine, Buffalo, Canton, Cecil, Chartiers, Cross Creek, Donegal, East Finley, Fallowfield part, Districts 01, 02 only block 1030 of tract 781700, 03 and 04, Hanover, Hopewell, Independence, Jefferson, Morris, Mount Pleasant, North Bethlehem, North Franklin, North Strabane, Nottingham, Peters, Robinson, Smith, Somerset, South Franklin, South Strabane, Union, West Bethlehem, West Finley and West Pike Run and the boroughs of Beallsville, Burgettstown, Canonsburg, Claysville, Cokeburg, Deemston, East Washington, Ellsworth, Finleyville, Green Hills, Houston, Marianna, McDonald Washington County Portion, Midway and West Middletown and part of Westmoreland County consisting of the cities of Greensburg, Jeannette and Latrobe and the townships of Cook, Donegal, East Huntingdon, Hempfield, Ligonier, Mount Pleasant, North Huntingdon, Penn, Rostraver, Sewickley, South Huntingdon and Unity and the boroughs of Adamsburg, Arona, Donegal, Hunker, Irwin, Laurel~~

~~Mountain, Ligonier, Madison, Manor, Mount Pleasant, New Stanton, North Irwin, Penn, Scottdale, Smithton, South Greensburg, Southwest Greensburg, Sutersville, Trafford Westmoreland County Portion, West Newton, Youngstown and Youngwood.~~

(1) THE FIRST DISTRICT IS COMPOSED OF PART OF DELAWARE COUNTY CONSISTING OF THE CITY OF CHESTER WARDS 01 (DIVISIONS 01, 02, 04, 05 AND 08), 02, 03, 04, 05, 06, 07, 08, 09, 10 AND 11 AND THE TOWNSHIPS OF CHESTER, DARBY WARDS 01, 02 AND 03 (DIVISION 01), NETHER PROVIDENCE, RIDLEY WARD 01 (DIVISION 02), TINICUM WARDS 01, 02 AND 04 AND UPPER DARBY DISTRICTS 02 (DIVISION 01), 04, 05 (DIVISIONS 01, 02 AND 05), 06 AND 07 AND THE BOROUGHS OF COLLINGDALE, COLWYN, DARBY, EAST LANSDOWNE, EDDYSTONE, FOLCROFT, GLENOLDEN PRECINCTS 02, 03, 04 AND 05, LANSDOWNE, MILLBOURNE, ROSE VALLEY, SHARON HILL, SWARTHMORE, UPLAND AND YEADON AND PART OF PHILADELPHIA COUNTY CONSISTING OF THE CITY OF PHILADELPHIA WARDS 01, 02, 03, 05, 07, 14, 15 (DIVISIONS 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 16, 17, 18 AND 19), 18, 19, 20 (DIVISIONS 01, 02, 03, 04, 05, 06, 08, 10 AND 11), 25, 26, 31, 33, 34, 37 (DIVISIONS 17, 18, 19 AND 20), 39, 40, 41, 45, 47 (DIVISION 01), 54 (DIVISIONS 03, 14, 15, 16, 19, 20 AND 21), 55 (DIVISIONS 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28 AND 29), 57 (DIVISION 18), 62 (DIVISIONS 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25 AND 26), 64 (DIVISION 12) AND 65.

(2) THE SECOND DISTRICT IS COMPOSED OF PART OF MONTGOMERY COUNTY CONSISTING OF THE TOWNSHIP OF LOWER MERION WARDS 01, 02 (DIVISIONS 01, 02 ALL BLOCKS EXCEPT 1000, 1001,

1002 AND 1021 OF TRACT 204800 AND 03), 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13 AND 14 AND THE BOROUGH OF NARBERTH AND PART OF PHILADELPHIA COUNTY CONSISTING OF THE CITY OF PHILADELPHIA WARDS 04, 06, 08, 09, 10, 11, 12, 13, 15 (DIVISION 15), 16, 17, 20 (DIVISIONS 07 AND 09), 21, 22, 24, 27, 28, 29, 30, 32, 36, 37 (DIVISIONS 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16 AND 21), 38, 43, 44, 46, 47 (DIVISIONS 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13 AND 14), 48, 49, 50, 51, 52, 59, 60 AND 61 (DIVISIONS 01, 02, 06, 07, 17, 21, 22, 23 AND 24).

(3) THE THIRD DISTRICT IS COMPOSED OF ALL OF ARMSTRONG COUNTY; ALL OF BUTLER COUNTY; PART OF CLARION COUNTY CONSISTING OF THE TOWNSHIPS OF BRADY, LICKING, MADISON, MONROE, PERRY, PINEY ALL BLOCKS EXCEPT 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3013, 3014, 3015, 3021, 3024, 3026, 3030, 3031, 3032, 3037, 3038, 3039, 3044, 3046, 3056, 3136 AND 3137 OF TRACT 160500, PORTER, REDBANK AND TOBY AND THE BOROUGHS OF CALLENSBURG, EAST BRADY, HAWTHORN, NEW BETHLEHEM, RIMERSBURG AND SLIGO; PART OF CRAWFORD COUNTY CONSISTING OF THE CITY OF MEADVILLE AND THE TOWNSHIPS OF ATHENS, BEAVER, BLOOMFIELD, CAMBRIDGE, CONNEAUT, CUSSEWAGO, EAST FAIRFIELD, EAST FALLOWFIELD, EAST MEAD, FAIRFIELD, GREENWOOD, HAYFIELD, NORTH SHENANGO, OIL CREEK, PINE, RANDOLPH, RICHMOND, ROCKDALE, ROME, SADSBURY, SOUTH SHENANGO, SPARTA, SPRING, STEUBEN, SUMMERHILL, SUMMIT, TROY, UNION, VENANGO, VERNON, WAYNE, WEST FALLOWFIELD, WEST MEAD, WEST SHENANGO AND WOODCOCK AND THE BOROUGHS OF BLOOMING VALLEY, CAMBRIDGE SPRINGS, CENTERVILLE, COCHRANTON, CONNEAUT LAKE, CONNEAUTVILLE, HYDETOWN, LINESVILLE, SAEGERTOWN, SPARTANSBURG, SPRINGBORO, TOWNVILLE, VENANGO AND WOODCOCK;

PART OF ERIE COUNTY CONSISTING OF THE CITY OF ERIE AND THE TOWNSHIPS OF CONNEAUT, ELK CREEK, FAIRVIEW, GIRARD, LAKE ERIE, MILLCREEK DISTRICTS 03, 04, 05, 06, 07, 08, 09, 10, 13, 14, 15, 16, 17, 22 AND 24 AND SPRINGFIELD AND THE BOROUGHS OF ALBION, CRANESVILLE, GIRARD, LAKE CITY AND PLATEA; PART OF LAWRENCE COUNTY CONSISTING OF THE CITY OF NEW CASTLE AND THE TOWNSHIPS OF HICKORY, MAHONING, NESHANNOCK, NORTH BEAVER, PLAIN GROVE, PULASKI, SCOTT, SHENANGO, SLIPPERY ROCK, TAYLOR, UNION, WASHINGTON AND WILMINGTON AND THE BOROUGHS OF BESSEMER, NEW WILMINGTON, S.N.P.J., SOUTH NEW CASTLE AND VOLANT AND ALL OF MERCER COUNTY.

(4) THE FOURTH DISTRICT IS COMPOSED OF ALL OF ADAMS COUNTY; PART OF CUMBERLAND COUNTY CONSISTING OF THE TOWNSHIPS OF EAST PENNSBORO, HAMPDEN, LOWER ALLEN, SILVER SPRING AND UPPER ALLEN PRECINCTS 01, 02, 03, 04, 05, 07, 08 AND 10 AND THE BOROUGHS OF CAMP HILL, LEMOYNE, MECHANICSBURG WARD 02 (DIVISION 02), NEW CUMBERLAND, SHIREMANSTOWN AND WORMLEYSBURG; PART OF DAUPHIN COUNTY CONSISTING OF THE CITY OF HARRISBURG WARDS 01 (DIVISION 02), 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14 AND 15 AND THE TOWNSHIP OF SUSQUEHANNA WARDS 01 AND 03 ONLY BLOCKS 4009, 4010, 4027, 4029, 4037 AND 4038 OF TRACT 022000 AND ALL OF YORK COUNTY.

(5) THE FIFTH DISTRICT IS COMPOSED OF ALL OF CAMERON COUNTY; ALL OF CENTRE COUNTY; PART OF CLARION COUNTY CONSISTING OF THE TOWNSHIPS OF ASHLAND, BEAVER, CLARION, ELK, FARMINGTON, HIGHLAND, KNOX, LIMESTONE, MILLCREEK, PAINT, PINEY ONLY BLOCKS 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3013, 3014, 3015, 3021, 3024, 3026, 3030, 3031, 3032, 3037, 3038, 3039, 3044, 3046, 3056, 3136 AND 3137 OF TRACT 160500, RICHLAND, SALEM AND WASHINGTON AND

THE BOROUGHS OF CLARION, EMLENTON (CLARION COUNTY PORTION), FOXBURG, KNOX, SHIPPENVILLE, ST. PETERSBURG AND STRATTANVILLE; ALL OF CLEARFIELD COUNTY; ALL OF CLINTON COUNTY; PART OF CRAWFORD COUNTY CONSISTING OF THE CITY OF TITUSVILLE; ALL OF ELK COUNTY; PART OF ERIE COUNTY CONSISTING OF THE CITY OF CORRY AND THE TOWNSHIPS OF AMITY, CONCORD, FRANKLIN, GREENE, GREENFIELD, HARBORCREEK, LAWRENCE PARK, LEBOEUF, MCKEAN, MILLCREEK DISTRICTS 01, 02, 11, 12, 18, 19, 20, 21 AND 23, NORTH EAST, SUMMIT, UNION, VENANGO, WASHINGTON, WATERFORD AND WAYNE AND THE BOROUGHS OF EDINBORO, ELGIN, MCKEAN, MILL VILLAGE, NORTH EAST, UNION CITY, WATERFORD, WATTSBURG AND WESLEYVILLE; ALL OF FOREST COUNTY; PART OF HUNTINGDON COUNTY CONSISTING OF THE TOWNSHIPS OF BARREE, BRADY, FRANKLIN, HENDERSON, JACKSON, JUNIATA, LOGAN, MILLER, MORRIS, ONEIDA, PENN ALL BLOCKS EXCEPT 2102 OF TRACT 950600, PORTER, SHIRLEY DISTRICTS MOUNT UNION AND SHIRLEY, SMITHFIELD, SPRUCE CREEK, UNION, WALKER, WARRIORS MARK AND WEST AND THE BOROUGHS OF ALEXANDRIA, BIRMINGHAM, HUNTINGDON, MAPLETON, MILL CREEK, MOUNT UNION, PETERSBURG AND SHIRLEYSBURG; ALL OF JEFFERSON COUNTY; ALL OF MCKEAN COUNTY; ALL OF POTTER COUNTY; PART OF TIOGA COUNTY CONSISTING OF THE TOWNSHIPS OF CHATHAM, CLYMER, GAINES AND SHIPPEN ALL BLOCKS EXCEPT 2016, 2017, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2105, 2106, 2107, 2108, 2109, 2110, 2116, 2132, 2133, 2134 AND 2209 OF TRACT 950900; ALL OF VENANGO COUNTY AND ALL OF WARREN COUNTY.

(6) THE SIXTH DISTRICT IS COMPOSED OF PART OF BERKS COUNTY CONSISTING OF THE TOWNSHIPS OF ALSACE, BERN, COLEBROOKDALE, CUMRU DISTRICTS 01 ALL BLOCKS EXCEPT 1000, 1001, 1003, 1004, 1005, 1006 AND 1007 OF TRACT 002600 AND

BLOCKS 1018 AND 1139 OF TRACT 002900, 04, 06 AND 07, DISTRICT, EXETER, HEIDELBERG, HEREFORD DISTRICT 02, LOWER ALSACE DISTRICT 02, LOWER HEIDELBERG, MAIDENCREEK, MARION, MUHLENBERG DISTRICTS 02, 03, 05, 06, 07, 08 AND 09, NORTH HEIDELBERG, ONTELAUNEE, PENN, PIKE, RICHMOND, ROCKLAND, RUSCOMBMANOR, SOUTH HEIDELBERG, SPRING DISTRICTS 05, 07 AND 08 AND WASHINGTON AND THE BOROUGHS OF BALLY, BECHTELSVILLE, BERNVILLE, BIRDSBORO, BOYERTOWN, FLEETWOOD, KENHORST, LAURELDALE DISTRICT 01 ALL BLOCKS EXCEPT 4034, 4039 AND 4045 OF TRACT 012800, LEESPORT, ROBESONIA, SHILLINGTON, ST. LAWRENCE, WERNERSVILLE, WOMELSDORF AND WYOMISSING DISTRICTS 01, 02, 04 AND 05; PART OF CHESTER COUNTY CONSISTING OF THE TOWNSHIPS OF CALN DISTRICTS 01 AND 04, CHARLESTOWN, EAST BRADFORD DISTRICTS NORTH AND SOUTH (DIVISION 01), EAST BRANDYWINE, EAST CALN, EAST COVENTRY, EAST GOSHEN, EAST NANTMEAL, EAST PIKELAND, EAST VINCENT, EAST WHITELAND, EASTTOWN, NORTH COVENTRY, SCHUYLKILL, SOUTH COVENTRY, THORNBURY, TREDYFFRIN, UPPER UWCHLAN, UWCHLAN, WEST BRADFORD PRECINCTS 01, 02 AND 03, WEST GOSHEN, WEST PIKELAND, WEST VINCENT, WEST WHITELAND, WESTTOWN AND WILLISTOWN AND THE BOROUGHS OF DOWNINGTOWN, MALVERN, PHOENIXVILLE, SPRING CITY AND WEST CHESTER; PART OF LEBANON COUNTY CONSISTING OF THE CITY OF LEBANON WARDS 01, 02, 04, 05, 07, 08, 09 AND 10 AND THE TOWNSHIPS OF HEIDELBERG, JACKSON, MILLCREEK, NORTH LEBANON DISTRICT EAST ONLY BLOCK 2039 OF TRACT 002702, SOUTH LEBANON AND WEST CORNWALL AND THE BOROUGHS OF CORNWALL, MYERSTOWN AND RICHLAND AND PART OF MONTGOMERY COUNTY CONSISTING OF THE TOWNSHIPS OF DOUGLASS, LIMERICK, LOWER POTTSGROVE, LOWER PROVIDENCE, NEW HANOVER, PERKIOMEN DISTRICTS 01 ALL BLOCKS EXCEPT 1045, 1046, 1047, 1048, 1057,

1059, 1061 AND 1065 OF TRACT 206501 AND 02, UPPER HANOVER DISTRICT 03, UPPER POTTSGROVE, UPPER PROVIDENCE, WEST NORRITON DISTRICTS 01 (DIVISION 01), 02 (DIVISION 01) AND 03 AND WEST POTTSGROVE AND THE BOROUGHS OF COLLEGEVILLE, EAST GREENVILLE, PENNSBURG, POTTSTOWN, RED HILL, ROYERSFORD, SCHWENKSVILLE AND TRAPPE.

(7) THE SEVENTH DISTRICT IS COMPOSED OF PART OF BERKS COUNTY CONSISTING OF THE TOWNSHIPS OF AMITY, BRECKNOCK, CAERNARVON, CUMRU DISTRICTS 02, 03 AND 05, DOUGLASS, EARL, OLEY, ROBESON, SPRING DISTRICTS 01, 06 AND 11 AND UNION AND THE BOROUGHS OF MOHNTON AND NEW MORGAN; PART OF CHESTER COUNTY CONSISTING OF THE TOWNSHIPS OF BIRMINGHAM, CALN DISTRICT 03, EAST BRADFORD DISTRICT SOUTH (DIVISION 02), HIGHLAND, HONEY BROOK, KENNETT PRECINCTS 01, 02 ALL BLOCKS EXCEPT 1003, 1004, 1005 AND 1007 OF TRACT 303301 AND 04, LONDON BRITAIN, LONDONDERRY, NEW GARDEN, NEWLIN, PENN, PENNSBURY DISTRICTS NORTH (DIVISION 02) AND SOUTH, POCOPSON, SADSBURY DISTRICT NORTH, UPPER OXFORD, WALLACE, WARWICK, WEST BRADFORD PRECINCTS 04 AND 05, WEST BRANDYWINE, WEST CALN, WEST FALLOWFIELD, WEST NANTMEAL AND WEST SADSBURY AND THE BOROUGHS OF ATGLEN, ELVERSON AND HONEY BROOK; PART OF DELAWARE COUNTY CONSISTING OF THE CITY OF CHESTER WARD 01 (DIVISIONS 03, 06 AND 07) AND THE TOWNSHIPS OF ASTON, BETHEL, CHADDS FORD, CONCORD, DARBY WARDS 03 (DIVISION 02), 04 AND 05, EDGMONT, HAVERFORD, LOWER CHICHESTER, MARPLE, MIDDLETOWN, NEWTOWN, RADNOR, RIDLEY WARDS 01 (DIVISIONS 01 AND 03), 02, 03, 04, 05, 06, 07, 08 AND 09, SPRINGFIELD, THORNBURY, TINICUM WARDS 03 AND 05, UPPER CHICHESTER, UPPER DARBY DISTRICTS 01, 02 (DIVISIONS 02, 03, 04, 05, 06 AND 07), 03 AND 05 (DIVISIONS 03, 04, 06, 07, 08 AND 09) AND UPPER

PROVIDENCE AND THE BOROUGHS OF ALDAN, BROOKHAVEN, CHESTER HEIGHTS, CLIFTON HEIGHTS, GLENOLDEN PRECINCTS 01 AND 06, MARCUS HOOK, MEDIA, MORTON, NORWOOD, PARKSIDE, PROSPECT PARK, RIDLEY PARK, RUTLEDGE AND TRAINER; PART OF LANCASTER COUNTY CONSISTING OF THE TOWNSHIPS OF BART, COLERAIN, LEACOCK, PARADISE, SADSBURY AND SALISBURY AND THE BOROUGH OF CHRISTIANA AND PART OF MONTGOMERY COUNTY CONSISTING OF THE TOWNSHIPS OF EAST NORRITON DISTRICT 01 (DIVISIONS 01, 03 AND 04), HORSHAM DISTRICTS 02 (DIVISIONS 02 ALL BLOCKS EXCEPT 2006 AND 2027 OF TRACT 200506, 03 AND 04), 03 (DIVISIONS 03 AND 05) AND 04 (DIVISIONS 01, 02 AND 03), LOWER GWYNEDD DISTRICTS 01 (DIVISIONS 02 AND 03) AND 02 (DIVISION 01), PERKIOMEN DISTRICT 01 ONLY BLOCKS 1045, 1046, 1047, 1048, 1057, 1059, 1061 AND 1065 OF TRACT 206501, PLYMOUTH DISTRICTS 01 (DIVISION 01), 02 (DIVISIONS 01, 02 AND 03A) AND 03 (DIVISION 01), SKIPPACK, SPRINGFIELD DISTRICTS 03, 06 AND 07 (DIVISION 02), TOWAMENCIN, UPPER DUBLIN DISTRICTS 02 (DIVISION 01), 04 (DIVISION 01), 05 (DIVISION 01), 06 (DIVISION 02) AND 07 (DIVISIONS 01 AND 02), UPPER GWYNEDD DISTRICTS 01, 02, 04, 05, 06 AND 07, UPPER MERION DISTRICTS BELMONT (DIVISIONS 02, 04 AND 05), GULPH (DIVISION 02) AND ROBERTS, WEST NORRITON DISTRICTS 01 (DIVISION 02), 02 (DIVISION 02) AND 04, WHITEMARSH DISTRICTS EAST AND MIDDLE (DIVISION 05), WHITPAIN DISTRICTS 01, 02, 03, 05, 06, 07, 08, 11 AND 12 AND WORCESTER.

(8) THE EIGHTH DISTRICT IS COMPOSED OF ALL OF BUCKS COUNTY AND PART OF MONTGOMERY COUNTY CONSISTING OF THE TOWNSHIPS OF FRANCONIA, HATFIELD ALL BLOCKS EXCEPT 3006 OF TRACT 200704, LOWER FREDERICK, LOWER SALFORD, MARLBOROUGH, SALFORD, UPPER FREDERICK, UPPER HANOVER DISTRICTS 01 AND 02

AND UPPER SALFORD AND THE BOROUGHS OF GREEN LANE, HATFIELD, SOUDERTON AND TELFORD (MONTGOMERY COUNTY PORTION).

(9) THE NINTH DISTRICT IS COMPOSED OF ALL OF BEDFORD COUNTY; ALL OF BLAIR COUNTY; PART OF CAMBRIA COUNTY CONSISTING OF THE TOWNSHIPS OF ALLEGHENY, BARR DISTRICT SOUTH ONLY BLOCKS 3001 AND 3002 OF TRACT 011800, CHEST, CLEARFIELD, CRESSON, DEAN, EAST CARROLL DISTRICT NORTH, ELDER, GALLITZIN, MUNSTER, READE, SUSQUEHANNA, WEST CARROLL AND WHITE AND THE BOROUGHS OF ASHVILLE, CHEST SPRINGS, CRESSON, GALLITZIN, HASTINGS, LORETTO, NORTHERN CAMBRIA WARDS 01, 02, 03 ALL BLOCKS EXCEPT 3026 OF TRACT 011800, 04 AND 05, PATTON, SANKERTOWN AND TUNNELHILL (CAMBRIA COUNTY PORTION); ALL OF FAYETTE COUNTY; ALL OF FRANKLIN COUNTY; ALL OF FULTON COUNTY; PART OF GREENE COUNTY CONSISTING OF THE TOWNSHIPS OF CUMBERLAND, DUNKARD, GREENE, JEFFERSON, MONONGAHELA AND MORGAN DISTRICTS CHART/T.GRDN AND MATHER AND THE BOROUGHS OF CARMICHAELS, CLARKSVILLE, GREENSBORO, JEFFERSON AND RICES LANDING; PART OF HUNTINGDON COUNTY CONSISTING OF THE TOWNSHIPS OF CARBON, CASS, CLAY, CROMWELL, DUBLIN, HOPEWELL, LINCOLN, PENN ONLY BLOCK 2102 OF TRACT 950600, SHIRLEY DISTRICT VALLEY PT., SPRINGFIELD, TELL, TODD AND WOOD AND THE BOROUGHS OF BROAD TOP CITY, CASSVILLE, COALMONT, DUDLEY, MARKLESBURG, ORBISONIA, ROCKHILL, SALTILLO, SHADE GAP AND THREE SPRINGS; ALL OF INDIANA COUNTY; PART OF SOMERSET COUNTY CONSISTING OF THE TOWNSHIPS OF ADDISON, ALLEGHENY, BROTHERSVALLEY, ELK LICK, FAIRHOPE, GREENVILLE, LARIMER, LOWER TURKEYFOOT, NORTHAMPTON, SOUTHAMPTON, STONYCREEK AND SUMMIT AND THE BOROUGHS OF ADDISON, BERLIN, CALLIMONT, CONFLUENCE, GARRETT, INDIAN LAKE, MEYERSDALE, NEW BALTIMORE, SALISBURY, SHANKSVILLE, URSINA AND WELLERSBURG; PART OF

WASHINGTON COUNTY CONSISTING OF THE CITY OF MONONGAHELA AND THE TOWNSHIPS OF CARROLL, EAST BETHLEHEM AND FALLOWFIELD DISTRICTS 01, 02 ALL BLOCKS EXCEPT 1030 OF TRACT 781700, 03 AND 04, AND THE BOROUGHS OF ALLENPORT, BENTLEYVILLE, CALIFORNIA, CENTERVILLE, CHARLEROI, COAL CENTER, DONORA, DUNLEVY, ELCO, LONG BRANCH, NEW EAGLE, NORTH CHARLEROI, ROSCOE, SPEERS, STOCKDALE, TWILIGHT AND WEST BROWNSVILLE AND PART OF WESTMORELAND COUNTY CONSISTING OF THE CITY OF MONESSEN AND THE BOROUGH OF NORTH BELLE VERNON.

(10) THE TENTH DISTRICT IS COMPOSED OF ALL OF BRADFORD COUNTY; ALL OF JUNIATA COUNTY; PART OF LACKAWANNA COUNTY CONSISTING OF THE TOWNSHIPS OF ABINGTON, BENTON, CARBONDALE DISTRICTS NORTHEAST AND SOUTH, CLIFTON, COVINGTON, ELMHURST, FELL, GLENBURN, GREENFIELD, JEFFERSON, LA PLUME, MADISON, NEWTON, NORTH ABINGTON, RANSOM, ROARING BROOK, SCOTT, SOUTH ABINGTON AND WEST ABINGTON AND THE BOROUGHS OF ARCHBALD WARDS 02 AND 03, CLARKS GREEN, CLARKS SUMMIT, DALTON, MOSCOW, OLYPHANT WARDS 03 (DIVISION 02 ALL BLOCKS EXCEPT 1025 OF TRACT 111400) AND 04, THROOP WARD 04 AND VANDLING; ALL OF LYCOMING COUNTY; ALL OF MIFFLIN COUNTY; PART OF MONROE COUNTY CONSISTING OF THE TOWNSHIPS OF BARRETT, JACKSON, PARADISE, POCONO, PRICE AND STROUD DISTRICTS 02, 03 AND 04 AND THE BOROUGHS OF EAST STROUDSBURG, MOUNT POCONO AND STROUDSBURG; PART OF NORTHUMBERLAND COUNTY CONSISTING OF THE TOWNSHIPS OF DELAWARE, EAST CHILLISQUAQUE, LEWIS, POINT, TURBOT AND WEST CHILLISQUAQUE AND THE BOROUGHS OF MCEWENSVILLE, MILTON, NORTHUMBERLAND, RIVERSIDE ONLY BLOCKS 2032, 2035, 2043, 2100, 2102, 2103, 3037, 3038, 3039, 3043, 3050 AND 3051 OF TRACT 080700, TURBOTVILLE AND WATSONTOWN; PART OF PERRY COUNTY CONSISTING OF THE TOWNSHIPS OF BUFFALO, CENTRE, GREENWOOD,

HOWE, JACKSON, JUNIATA, LIVERPOOL, MILLER, NORTH EAST MADISON, OLIVER, SAVILLE, SOUTH WEST MADISON, TOBOYNE, TUSCARORA, TYRONE AND WATTS AND THE BOROUGHS OF BLAIN, BLOOMFIELD, LANDISBURG, LIVERPOOL, MILLERSTOWN, NEW BUFFALO AND NEWPORT; ALL OF PIKE COUNTY; ALL OF SNYDER COUNTY; ALL OF SULLIVAN COUNTY; ALL OF SUSQUEHANNA COUNTY; PART OF TIOGA COUNTY CONSISTING OF THE TOWNSHIPS OF BLOSS, BROOKFIELD, CHARLESTON, COVINGTON, DEERFIELD, DELMAR, DUNCAN, ELK, FARMINGTON, HAMILTON, JACKSON, LAWRENCE, LIBERTY, MIDDLEBURY, MORRIS, NELSON, OSCEOLA, PUTNAM, RICHMOND, RUTLAND, SHIPPEN ONLY BLOCKS 2016, 2017, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2105, 2106, 2107, 2108, 2109, 2110, 2116, 2132, 2133, 2134 AND 2209 OF TRACT 950900, SULLIVAN, TIOGA, UNION, WARD AND WESTFIELD AND THE BOROUGHS OF BLOSSBURG, ELKLAND, KNOXVILLE, LAWRENCEVILLE, LIBERTY, MANSFIELD, ROSEVILLE, TIOGA, WELLSBORO AND WESTFIELD; ALL OF UNION COUNTY AND ALL OF WAYNE COUNTY.

(11) THE ELEVENTH DISTRICT IS COMPOSED OF PART OF CARBON COUNTY CONSISTING OF THE TOWNSHIPS OF BANKS, KIDDER, LAUSANNE, LEHIGH, PACKER AND PENN FOREST AND THE BOROUGHS OF BEAVER MEADOWS, EAST SIDE AND WEATHERLY; ALL OF COLUMBIA COUNTY; PART OF CUMBERLAND COUNTY CONSISTING OF THE TOWNSHIPS OF COOKE, DICKINSON, HOPEWELL, LOWER FRANKFORD, LOWER MIFFLIN, MIDDLESEX, MONROE, NORTH MIDDLETON, NORTH NEWTON, PENN, SHIPPENSBURG, SOUTH MIDDLETON, SOUTH NEWTON, SOUTHAMPTON, UPPER ALLEN PRECINCTS 06 AND 09, UPPER FRANKFORD, UPPER MIFFLIN AND WEST PENNSBORO AND THE BOROUGHS OF CARLISLE, MECHANICSBURG WARDS 01, 02 (DIVISION 01), 03, 04 AND 05, MOUNT HOLLY SPRINGS, NEWBURG, NEWVILLE AND SHIPPENSBURG (CUMBERLAND COUNTY PORTION); PART OF DAUPHIN

COUNTY CONSISTING OF THE CITY OF HARRISBURG WARD 01 (DIVISIONS 01 AND 03) AND THE TOWNSHIPS OF HALIFAX, JACKSON, JEFFERSON, LOWER PAXTON, LOWER SWATARA, LYKENS, MIDDLE PAXTON, MIFFLIN, REED, RUSH, SUSQUEHANNA WARDS 02, 03 ALL BLOCKS EXCEPT 4009, 4010, 4027, 4029, 4037 AND 4038 OF TRACT 022000, 04, 05, 06, 07, 08 AND 09, SWATARA, UPPER PAXTON, WASHINGTON, WAYNE, WEST HANOVER DISTRICT 01, WICONISCO AND WILLIAMS AND THE BOROUGHS OF BERRYSBURG, DAUPHIN, ELIZABETHVILLE, GRATZ, HALIFAX, HIGHSPIRE, LYKENS, MILLERSBURG, PAXTANG, PENBROOK, PILLOW, STEELTON AND WILLIAMSTOWN; PART OF LUZERNE COUNTY CONSISTING OF THE CITIES OF HAZLETON AND NANTICOKE AND THE TOWNSHIPS OF BEAR CREEK, BLACK CREEK, BUCK, BUTLER, CONYNGHAM, DALLAS, DENNISON, DORRANCE, EXETER, FAIRMOUNT, FAIRVIEW, FOSTER, FRANKLIN, HANOVER, HAZLE, HOLLENBACK, HUNLOCK, HUNTINGTON, JACKSON, KINGSTON, LAKE, LEHMAN, NESCOPECK, NEWPORT, PLYMOUTH, RICE, ROSS, SALEM, SLOCUM, SUGARLOAF, UNION AND WRIGHT AND THE BOROUGHS OF ASHLEY, BEAR CREEK VILLAGE, CONYNGHAM, COURTDALE, DALLAS, EDWARDSVILLE, FORTY FORT, FREELAND, HARVEYS LAKE, JEDDO, KINGSTON, LARKSVILLE, LAUREL RUN, LUZERNE, NESCOPECK, NEW COLUMBUS, NUANGOLA, PENN LAKE PARK, PLYMOUTH, PRINGLE, SHICKSHINNY, SUGAR NOTCH, SWOYERSVILLE, WARRIOR RUN, WEST HAZLETON AND WHITE HAVEN; ALL OF MONTOUR COUNTY; PART OF NORTHUMBERLAND COUNTY CONSISTING OF THE CITIES OF SHAMOKIN AND SUNBURY AND THE TOWNSHIPS OF COAL, EAST CAMERON, JACKSON, JORDAN, LITTLE MAHANOY, LOWER AUGUSTA, LOWER MAHANOY, MOUNT CARMEL, RALPHO, ROCKEFELLER, RUSH, SHAMOKIN, UPPER AUGUSTA, UPPER MAHANOY, WASHINGTON, WEST CAMERON AND ZERBE AND THE BOROUGHS OF HERNDON, KULPMONT, MARION HEIGHTS, MOUNT CARMEL, RIVERSIDE ALL BLOCKS EXCEPT 2032, 2035, 2043, 2100, 2102,

2103, 3037, 3038, 3039, 3043, 3050 AND 3051 OF TRACT 080700 AND SNYDERTOWN; PART OF PERRY COUNTY CONSISTING OF THE TOWNSHIPS OF CARROLL, PENN, RYE, SPRING AND WHEATFIELD AND THE BOROUGHS OF DUNCANNON AND MARYSVILLE AND ALL OF WYOMING COUNTY.

(12) THE TWELFTH DISTRICT IS COMPOSED OF PART OF ALLEGHENY COUNTY CONSISTING OF THE TOWNSHIPS OF ALEPPO, FAWN, FRAZER, HAMPTON, HARRISON WARDS 01 (DIVISIONS 02 AND 03), 03, 04 AND 05 (DIVISION 02), INDIANA, KILBUCK, MARSHALL, MCCANDLESS, O'HARA, OHIO, PINE, RESERVE, RICHLAND, ROSS, SHALER AND WEST DEER AND THE BOROUGHS OF ASPINWALL, BELL ACRES, BRADFORD WOODS, FOX CHAPEL, FRANKLIN PARK, GLEN OSBORNE, HAYSVILLE, MONROEVILLE WARDS 03 (DIVISIONS 01 AND 04) AND 04 (DIVISION 03), PLUM, SEWICKLEY, SEWICKLEY HEIGHTS, SEWICKLEY HILLS AND WEST VIEW; ALL OF BEAVER COUNTY; PART OF CAMBRIA COUNTY CONSISTING OF THE CITY OF JOHNSTOWN AND THE TOWNSHIPS OF ADAMS, BARR DISTRICTS NORTH AND SOUTH ALL BLOCKS EXCEPT 3001 AND 3002 OF TRACT 011800, BLACKLICK, CAMBRIA, CONEMAUGH, CROYLE, EAST CARROLL DISTRICT SOUTH, EAST TAYLOR, JACKSON, LOWER YODER, MIDDLE TAYLOR, NORTHERN CAMBRIA WARD 03 ONLY BLOCK 3026 OF TRACT 011800, PORTAGE, RICHLAND, STONYCREEK, SUMMERHILL, UPPER YODER, WASHINGTON AND WEST TAYLOR AND THE BOROUGHS OF BROWNSTOWN, CARROLLTOWN, CASSANDRA, DAISYTOWN, DALE, EAST CONEMAUGH, EBENSBURG, EHRENFELD, FERNDALE, FRANKLIN, GEISTOWN, LILLY, LORAIN, NANTY GLO, PORTAGE, SCALP LEVEL, SOUTH FORK, SOUTHMONT, SUMMERHILL, VINTONDALE, WESTMONT AND WILMORE; PART OF LAWRENCE COUNTY CONSISTING OF THE TOWNSHIPS OF LITTLE BEAVER, PERRY AND WAYNE AND THE BOROUGHS OF ELLPORT, ELLWOOD CITY (LAWRENCE COUNTY PORTION), ENON VALLEY, NEW BEAVER AND WAMPUM; PART OF

SOMERSET COUNTY CONSISTING OF THE TOWNSHIPS OF BLACK, CONEMAUGH, JEFFERSON, JENNER, LINCOLN, MIDDLECREEK, MILFORD, OGLE, PAINT, QUEMAHONING, SHADE, SOMERSET AND UPPER TURKEYFOOT AND THE BOROUGHS OF BENSON, BOSWELL, CASSELMAN, CENTRAL CITY, HOOVERSVILLE, JENNERSTOWN, NEW CENTERVILLE, PAINT, ROCKWOOD, SEVEN SPRINGS (SOMERSET COUNTY PORTION), SOMERSET, STOYSTOWN AND WINDBER AND PART OF WESTMORELAND COUNTY CONSISTING OF THE CITY OF LOWER BURRELL AND THE TOWNSHIPS OF ALLEGHENY, BELL, DERRY, FAIRFIELD, LOYALHANNA, SALEM, ST. CLAIR, UPPER BURRELL AND WASHINGTON AND THE BOROUGHS OF AVONMORE, BOLIVAR, DELMONT, DERRY, EAST VANDERGRIFT, EXPORT, HYDE PARK, MURRYSVILLE, NEW ALEXANDRIA, NEW FLORENCE, OKLAHOMA, SEWARD, VANDERGRIFT AND WEST LEECHBURG.

(13) THE THIRTEENTH DISTRICT IS COMPOSED OF PART OF MONTGOMERY COUNTY CONSISTING OF THE TOWNSHIPS OF ABINGTON, CHELTENHAM, EAST NORRITON DISTRICTS 01 (DIVISION 02) AND 02, HATFIELD DISTRICT 05 (DIVISION 02 ONLY BLOCK 3006 OF TRACT 200704), HORSHAM DISTRICTS 01, 02 (DIVISIONS 01 AND 02 ONLY BLOCKS 2006 AND 2027 OF TRACT 200506), 03 (DIVISIONS 01, 02 AND 04) AND 04 (DIVISION 04), LOWER GWYNEDD DISTRICTS 01 (DIVISIONS 01 AND 04) AND 02 (DIVISION 02), LOWER MERION WARD 02 (DIVISION 02 ONLY BLOCKS 1000, 1001, 1002 AND 1021 OF TRACT 204800), LOWER MORELAND, MONTGOMERY, PLYMOUTH DISTRICTS 01 (DIVISION 02), 02 (DIVISIONS 03B AND 03C), 03 (DIVISIONS 02 AND 03) AND 04, SPRINGFIELD DISTRICTS 01, 02, 04, 05 AND 07 (DIVISION 01), UPPER DUBLIN DISTRICTS 01, 02 (DIVISIONS 02 AND 03), 03, 04 (DIVISIONS 02 AND 03), 05 (DIVISIONS 01, 02 AND 03), 06 (DIVISIONS 01, 03A AND 03B) AND 07 (DIVISION 03), UPPER GWYNEDD DISTRICT 03, UPPER MERION DISTRICTS BELMONT

(DIVISIONS 01 AND 03), CANDLEBROOK, GULPH (DIVISION 01), KING, SWEDELAND AND SWEDESBURG, UPPER MORELAND, WHITEMARSH DISTRICTS MIDDLE (DIVISIONS 01, 02, 03 AND 04) AND WEST AND WHITPAIN DISTRICTS 04, 09 AND 10 AND THE BOROUGHS OF AMBLER, BRIDGEPORT, BRYN ATHYN, CONSHOHOCKEN, HATBORO, JENKINTOWN, LANSDALE, NORRISTOWN, NORTH WALES, ROCKLEDGE AND WEST CONSHOHOCKEN AND PART OF PHILADELPHIA COUNTY CONSISTING OF THE CITY OF PHILADELPHIA WARDS 23, 35, 42, 53, 54 (DIVISIONS 01, 02, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 17, 18 AND 22), 55 (DIVISION 24), 56, 57 (DIVISIONS 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27 AND 28), 58, 61 (DIVISIONS 03, 04, 05, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 25, 26, 27 AND 28), 62 (DIVISIONS 10 AND 20), 63, 64 (DIVISIONS 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 15, 16, 17 AND 18) AND 66.

(14) THE FOURTEENTH DISTRICT IS COMPOSED OF PART OF ALLEGHENY COUNTY CONSISTING OF THE CITIES OF CLAIRTON, DUQUESNE, MCKEESPORT AND PITTSBURGH AND THE TOWNSHIPS OF BALDWIN, EAST DEER, HARMAR, HARRISON WARDS 01 (DIVISION 01), 02 AND 05 (DIVISION 01), KENNEDY, NEVILLE, NORTH VERSAILLES, PENN HILLS, ROBINSON DISTRICTS 03 AND 05, SPRINGDALE, STOWE AND WILKINS AND THE BOROUGHS OF AVALON, BALDWIN, BELLEVUE, BEN AVON, BEN AVON HEIGHTS, BLAWNOX, BRACKENRIDGE, BRADDOCK, BRADDOCK HILLS, BRENTWOOD, CHALFANT, CHESWICK, CHURCHILL, CORAOPOLIS, CRAFTON, DORMONT, DRAVOSBURG, EAST MCKEESPORT, EAST PITTSBURGH, EDGEWOOD, EMSWORTH, ETNA, FOREST HILLS, GLASSPORT, GLENFIELD, GREEN TREE, HOMESTEAD, INGRAM, LIBERTY, LINCOLN, MCKEES ROCKS, MILLVALE, MONROEVILLE WARDS 01, 02 (DIVISION 02), 03 (DIVISION 03), 05 (DIVISIONS 01, 02 AND

04), 06 AND 07, MOUNT OLIVER, MUNHALL, NORTH BRADDOCK, OAKMONT, PITCAIRN, PORT VUE, RANKIN, SHARPSBURG, SPRINGDALE, SWISSVALE, TARENTUM, TRAFFORD (ALLEGHENY COUNTY PORTION), TURTLE CREEK, VERONA, VERSAILLES, WALL, WEST HOMESTEAD, WEST MIFFLIN, WHITAKER, WHITE OAK, WHITEHALL DISTRICT 01 ONLY BLOCKS 2006, 2008 AND 2009 OF TRACT 477200, WILKINSBURG AND WILMERDING AND PART OF WESTMORELAND COUNTY CONSISTING OF THE CITIES OF ARNOLD AND NEW KENSINGTON.

(15) THE FIFTEENTH DISTRICT IS COMPOSED OF PART OF BERKS COUNTY CONSISTING OF THE TOWNSHIPS OF ALBANY, BETHEL, CENTRE, GREENWICH, HEREFORD DISTRICT 01, JEFFERSON, LONGSWAMP, MAXATAWNY, PERRY, TILDEN, TULPEHOCKEN, UPPER BERN, UPPER TULPEHOCKEN AND WINDSOR AND THE BOROUGHS OF CENTERPORT, HAMBURG, KUTZTOWN, LENHARTSVILLE, LYONS, SHOEMAKERSVILLE, STRAUSSTOWN AND TOPTON; PART OF DAUPHIN COUNTY CONSISTING OF THE TOWNSHIPS OF CONEWAGO, DERRY, EAST HANOVER, LONDONDERRY, SOUTH HANOVER AND WEST HANOVER DISTRICTS 02, 03 AND 04 AND THE BOROUGHS OF HUMMELSTOWN, MIDDLETOWN AND ROYALTON; PART OF LEBANON COUNTY CONSISTING OF THE CITY OF LEBANON WARDS 03 AND 06 AND THE TOWNSHIPS OF ANNVILLE, BETHEL, EAST HANOVER, NORTH ANNVILLE, NORTH CORNWALL, NORTH LEBANON DISTRICTS EAST ALL BLOCKS EXCEPT 2039 OF TRACT 002702, MIDDLE AND WEST, NORTH LONDONDERRY, SOUTH ANNVILLE, SOUTH LONDONDERRY, SWATARA, UNION AND WEST LEBANON AND THE BOROUGHS OF CLEONA, JONESTOWN, MOUNT GRETNA AND PALMYRA; ALL OF LEHIGH COUNTY AND PART OF NORTHAMPTON COUNTY CONSISTING OF THE CITY OF BETHLEHEM (NORTHAMPTON COUNTY PORTION) WARDS 01, 02, 03, 04, 05, 06, 07, 08, 09, 14, 15, 16 AND 17 BLOCKS 1026, 1123, 2018 AND 2055 OF TRACT 011300 AND THE TOWNSHIPS OF ALLEN, BUSHKILL, EAST ALLEN, HANOVER, LEHIGH, LOWER NAZARETH, LOWER SAUCON,

MOORE, PLAINFIELD DISTRICTS BELFAST, KESSLERSVILLE AND PLAINFIELD CHURCH, UPPER NAZARETH DISTRICT WEST AND WILLIAMS AND THE BOROUGHS OF BATH, CHAPMAN, HELLERTOWN, NORTH CATASAUQUA, NORTHAMPTON AND WALNUTPORT.

(16) THE SIXTEENTH DISTRICT IS COMPOSED OF PART OF BERKS COUNTY CONSISTING OF THE CITY OF READING AND THE TOWNSHIPS OF CUMRU DISTRICT 01 ONLY BLOCKS 1000, 1001, 1003, 1004, 1005, 1006 AND 1007 OF TRACT 002600 AND BLOCKS 1018 AND 1139 OF TRACT 002900, LOWER ALSACE DISTRICT 01, MUHLENBERG DISTRICTS 01 AND 04 AND SPRING DISTRICTS 02, 03, 04, 09, 10 AND 12 AND THE BOROUGHS OF ADAMSTOWN (BERKS COUNTY PORTION), LAURELDALE DISTRICTS 01 ONLY BLOCKS 4034, 4039 AND 4045 OF TRACT 012800 AND 02, MOUNT PENN, SINKING SPRING, WEST READING AND WYOMISSING DISTRICT 03; PART OF CHESTER COUNTY CONSISTING OF THE CITY OF COATESVILLE AND THE TOWNSHIPS OF CALN DISTRICT 02, EAST FALLOWFIELD, EAST MARLBOROUGH, EAST NOTTINGHAM, ELK, FRANKLIN, KENNETT PRECINCT 02 ONLY BLOCKS 1003, 1004, 1005 AND 1007 OF TRACT 303301 AND 03, LONDON GROVE, LOWER OXFORD, NEW LONDON, PENNSBURY DISTRICT NORTH (DIVISION 01), SADSBURY DISTRICT SOUTH, VALLEY, WEST MARLBOROUGH AND WEST NOTTINGHAM AND THE BOROUGHS OF AVONDALE, KENNETT SQUARE, MODENA, OXFORD, PARKESBURG, SOUTH COATESVILLE AND WEST GROVE AND PART OF LANCASTER COUNTY CONSISTING OF THE CITY OF LANCASTER AND THE TOWNSHIPS OF BRECKNOCK, CAERNARVON, CLAY, CONESTOGA, CONOY, DRUMORE, EARL, EAST COCALICO, EAST DONEGAL, EAST DRUMORE, EAST EARL, EAST HEMPFIELD, EAST LAMPETER, EDEN, ELIZABETH, EPHRATA, FULTON, LANCASTER, LITTLE BRITAIN, MANHEIM, MANOR, MARTIC, MOUNT JOY, PENN, PEQUEA, PROVIDENCE, RAPHO, STRASBURG, UPPER LEACOCK, WARWICK, WEST COCALICO, WEST DONEGAL, WEST EARL, WEST HEMPFIELD AND WEST LAMPETER AND THE

BOROUGHS OF ADAMSTOWN (LANCASTER COUNTY PORTION), AKRON, COLUMBIA, DENVER, EAST PETERSBURG, ELIZABETHTOWN, EPHRATA, LITITZ, MANHEIM, MARIETTA, MILLERSVILLE, MOUNT JOY, MOUNTVILLE, NEW HOLLAND, QUARRYVILLE, STRASBURG AND TERRE HILL.

(17) THE SEVENTEENTH DISTRICT IS COMPOSED OF PART OF CARBON COUNTY CONSISTING OF THE TOWNSHIPS OF EAST PENN, FRANKLIN, LOWER TOWAMENSING, MAHONING AND TOWAMENSING AND THE BOROUGHS OF BOWMANSTOWN, JIM THORPE, LANSFORD, LEHIGHTON, NESQUEHONING, PALMERTON, PARRYVILLE, SUMMIT HILL AND WEISSPORT; PART OF LACKAWANNA COUNTY CONSISTING OF THE CITIES OF CARBONDALE AND SCRANTON AND THE TOWNSHIPS OF CARBONDALE DISTRICT NORTHWEST, SPRING BROOK AND THORNHURST AND THE BOROUGHS OF ARCHBALD WARDS 01 AND 04, BLAKELY, DICKSON CITY, DUNMORE, JERMYN, JESSUP, MAYFIELD, MOOSIC, OLD FORGE, OLYPHANT WARDS 01, 02 AND 03 (DIVISIONS 01 AND 02 ONLY BLOCK 1025 OF TRACT 111400), TAYLOR AND THROOP WARDS 01, 02 AND 03; PART OF LUZERNE COUNTY CONSISTING OF THE CITIES OF PITTSTON AND WILKES-BARRE AND THE TOWNSHIPS OF JENKINS, PITTSTON, PLAINS AND WILKES-BARRE AND THE BOROUGHS OF AVOCA, DUPONT, DURYEA, EXETER, HUGHESTOWN, LAFLIN, WEST PITTSTON, WEST WYOMING, WYOMING AND YATESVILLE; PART OF MONROE COUNTY CONSISTING OF THE TOWNSHIPS OF CHESTNUTHILL, COOLBAUGH, ELDRED, HAMILTON, MIDDLE SMITHFIELD, POLK, ROSS, SMITHFIELD, STROUD DISTRICTS 01, 05, 06 AND 07, TOBYHANNA AND TUNKHANNOCK AND THE BOROUGH OF DELAWARE WATER GAP; PART OF NORTHAMPTON COUNTY CONSISTING OF THE CITIES OF BETHLEHEM (NORTHAMPTON COUNTY PORTION) WARD 17 ALL EXCEPT BLOCKS 1026, 1123, 2018 AND 2055 OF TRACT 011300 AND EASTON AND THE TOWNSHIPS OF BETHLEHEM, FORKS, LOWER MOUNT BETHEL, PALMER, PLAINFIELD

DISTRICT DELABOLE, UPPER MOUNT BETHEL, UPPER NAZARETH DISTRICT EAST AND WASHINGTON AND THE BOROUGHS OF BANGOR, EAST BANGOR, FREEMANSBURG, GLENDON, NAZARETH, PEN ARGYL, PORTLAND, ROSETO, STOCKERTOWN, TATAMY, WEST EASTON, WILSON AND WIND GAP AND ALL OF SCHUYLKILL COUNTY.

(18) THE EIGHTEENTH DISTRICT IS COMPOSED OF PART OF ALLEGHENY COUNTY CONSISTING OF THE TOWNSHIPS OF COLLIER, CRESCENT, ELIZABETH, FINDLAY, FORWARD, LEET, MOON, MOUNT LEBANON, NORTH FAYETTE, ROBINSON DISTRICTS 01, 02, 04, 06, 07, 08 AND 09, SCOTT, SOUTH FAYETTE, SOUTH PARK, SOUTH VERSAILLES AND UPPER ST. CLAIR AND THE BOROUGHS OF BETHEL PARK, BRIDGEVILLE, CARNEGIE, CASTLE SHANNON, EDGEWORTH, ELIZABETH, HEIDELBERG, JEFFERSON HILLS, LEETSDALE, MCDONALD (ALLEGHENY COUNTY PORTION), MONROEVILLE WARDS 02 (DIVISIONS 01 AND 03), 03 (DIVISION 02), 04 (DIVISIONS 01 AND 02) AND 05 (DIVISION 03), OAKDALE, PENNSBURY VILLAGE, PLEASANT HILLS, ROSSLYN FARMS, THORNBURG, WEST ELIZABETH, AND WHITEHALL DISTRICTS 01 ALL BLOCKS EXCEPT 2006, 2008 AND 2009 OF TRACT 477200, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15 AND 16; PART OF GREENE COUNTY CONSISTING OF THE TOWNSHIPS OF ALEPPO, CENTER, FRANKLIN, FREEPORT, GILMORE, GRAY, JACKSON, MORGAN DISTRICT LIPPENCOTT, MORRIS, PERRY, RICHHILL, SPRINGHILL, WASHINGTON, WAYNE AND WHITELEY AND THE BOROUGH OF WAYNESBURG; PART OF WASHINGTON COUNTY CONSISTING OF THE CITY OF WASHINGTON AND THE TOWNSHIPS OF AMWELL, BLAINE, BUFFALO, CANTON, CECIL, CHARTIERS, CROSS CREEK, DONEGAL, EAST FINLEY, FALLOWFIELD DISTRICT 02 ONLY BLOCK 1030 OF TRACT 781700, HANOVER, HOPEWELL, INDEPENDENCE, JEFFERSON, MORRIS, MOUNT PLEASANT, NORTH BETHLEHEM, NORTH FRANKLIN, NORTH STRABANE, NOTTINGHAM, PETERS, ROBINSON, SMITH, SOMERSET, SOUTH

FRANKLIN, SOUTH STRABANE, UNION, WEST BETHLEHEM, WEST FINLEY AND WEST PIKE RUN AND THE BOROUGHS OF BEALLSVILLE, BURGETTSTOWN, CANONSBURG, CLAYSVILLE, COKEBURG, DEEMSTON, EAST WASHINGTON, ELLSWORTH, FINLEYVILLE, GREEN HILLS, HOUSTON, MARIANNA, MCDONALD (WASHINGTON COUNTY PORTION), MIDWAY AND WEST MIDDLETOWN AND PART OF WESTMORELAND COUNTY CONSISTING OF THE CITIES OF GREENSBURG, JEANNETTE AND LATROBE AND THE TOWNSHIPS OF COOK, DONEGAL, EAST HUNTINGDON, HEMPFIELD, LIGONIER, MOUNT PLEASANT, NORTH HUNTINGDON, PENN, ROSTRAVER, SEWICKLEY, SOUTH HUNTINGDON AND UNITY AND THE BOROUGHS OF ADAMSBURG, ARONA, DONEGAL, HUNKER, IRWIN, LAUREL MOUNTAIN, LIGONIER, MADISON, MANOR, MOUNT PLEASANT, NEW STANTON, NORTH IRWIN, PENN, SCOTTDALE, SMITHTON, SOUTH GREENSBURG, SOUTHWEST GREENSBURG, SUTERSVILLE, TRAFFORD (WESTMORELAND COUNTY PORTION), WEST NEWTON, YOUNGSTOWN AND YOUNGWOOD.

Section 302. Current officeholders and vacancies.

(a) Current officeholders.--The members of Congress now in office shall continue in the office until the expiration of their respective terms.

(b) Vacancies.--Vacancies now existing or happening after the passage of this chapter and before the commencement of the terms of the members elected at the election of 2012 shall be filled for the unexpired terms from the districts established under section 301.

Section 303. Missed political subdivision.

In the event any political subdivision or part thereof should be omitted in the description of the congressional districts, the political subdivision or part thereof shall be included as a part of the congressional district which completely surrounds

it. Should any omitted political subdivision or part thereof be not completely surrounded by one congressional district, it shall become a part of that congressional district to which it is contiguous, or if there are two or more such contiguous districts, it shall become a part of that congressional district contiguous thereto which has the least population.

Section 304. Duty to publish notice of redistricting.

The secretary shall publish notice of the congressional districts as established at least once in at least one newspaper of general circulation in each county in which such newspapers are published. The notice shall contain legal descriptions for all congressional districts in the county in which the publication is made. The notice shall also state the population of the districts having the smallest and largest populations and the percentage variation of such districts from the average population for congressional districts.

CHAPTER 15

MISCELLANEOUS PROVISIONS

Section 1510. Effective date.

This act shall take effect immediately.

EXHIBIT 5

Bill Information - History

Senate Bill 1034; Regular Session 2017-2018

Sponsors: SCARNATI and CORMAN

Printer's No.(PN): 1441*

Short Title: An Act amending the act of December 22, 2011 (P.L.598, No.131), known as the Congressional Redistricting Act of 2011, in establishment of congressional districts, repealing provisions relating to congressional districts.

Actions:

PN 1441	Referred to STATE GOVERNMENT, Jan. 29, 2018
	Reported as committed, Jan. 29, 2018
	First consideration, Jan. 29, 2018
	Second consideration, Jan. 30, 2018
	Re-referred to APPROPRIATIONS, Jan. 30, 2018
	Re-reported as committed, Jan. 30, 2018
	Third consideration and final passage, Jan. 31, 2018 (49-0)
	(Remarks see Senate Journal Page ....), Jan. 31, 2018
	In the House
	Referred to STATE GOVERNMENT, Feb. 1, 2018
	Reported as committed, Feb. 6, 2018
	First consideration, Feb. 6, 2018
	Laid on the table, Feb. 6, 2018
	Removed from table, Feb. 6, 2018

* denotes current Printer's Number

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EXHIBIT 6

PRINTER'S NO. 1441

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1034 Session of 2018

INTRODUCED BY SCARNATI AND CORMAN, JANUARY 29, 2018

REFERRED TO STATE GOVERNMENT, JANUARY 29, 2018

AN ACT

Amending the act of December 22, 2011 (P.L.598, No.131), entitled "An act apportioning this Commonwealth into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census," in establishment of congressional districts, repealing provisions relating to congressional districts.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 301 of the act of December 22, 2011 (P.L.598, No.131), known as the Congressional Redistricting Act of 2011, is repealed:

Section 301. [Congressional districts.

For the purpose of electing representatives of the people of Pennsylvania to serve in the House of Representatives in the Congress of the United States, this Commonwealth shall be divided into 18 districts which shall have one Congressman each, as follows:

(1) The First District is composed of part of Delaware County consisting of the city of Chester Wards 01 (Divisions

01, 02, 04, 05 and 08), 02, 03, 04, 05, 06, 07, 08, 09, 10 and 11 and the townships of Chester, Darby Wards 01, 02 and 03 (Division 01), Nether Providence, Ridley Ward 01 (Division 02), Tinicum Wards 01, 02 and 04 and Upper Darby Districts 02 (Division 01), 04, 05 (Divisions 01, 02 and 05), 06 and 07 and the boroughs of Collingdale, Colwyn, Darby, East Lansdowne, Eddystone, Folcroft, Glenolden Precincts 02, 03, 04 and 05, Lansdowne, Millbourne, Rose Valley, Sharon Hill, Swarthmore, Upland and Yeadon and part of Philadelphia County consisting of the city of Philadelphia Wards 01, 02, 03, 05, 07, 14, 15 (Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 16, 17, 18 and 19), 18, 19, 20 (Divisions 01, 02, 03, 04, 05, 06, 08, 10 and 11), 25, 26, 31, 33, 34, 37 (Divisions 17, 18, 19 and 20), 39, 40, 41, 45, 47 (Division 01), 54 (Divisions 03, 14, 15, 16, 19, 20 and 21), 55 (Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28 and 29), 57 (Division 18), 62 (Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25 and 26), 64 (Division 12) and 65.

(2) The Second District is composed of part of Montgomery County consisting of the township of Lower Merion Wards 01, 02 (Divisions 01, 02 all blocks except 1000, 1001, 1002 and 1021 of tract 204800 and 03), 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13 and 14 and the borough of Narberth and part of Philadelphia County consisting of the city of Philadelphia Wards 04, 06, 08, 09, 10, 11, 12, 13, 15 (Division 15), 16, 17, 20 (Divisions 07 and 09), 21, 22, 24, 27, 28, 29, 30, 32, 36, 37 (Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16 and 21), 38, 43, 44,

46, 47 (Divisions 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13 and 14), 48, 49, 50, 51, 52, 59, 60 and 61 (Divisions 01, 02, 06, 07, 17, 21, 22, 23 and 24).

(3) The Third District is composed of all of Armstrong County; all of Butler County; part of Clarion County consisting of the townships of Brady, Licking, Madison, Monroe, Perry, Piney all blocks except 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3013, 3014, 3015, 3021, 3024, 3026, 3030, 3031, 3032, 3037, 3038, 3039, 3044, 3046, 3056, 3136 and 3137 of tract 160500, Porter, Redbank and Toby and the boroughs of Callensburg, East Brady, Hawthorn, New Bethlehem, Rimersburg and Sligo; part of Crawford County consisting of the city of Meadville and the townships of Athens, Beaver, Bloomfield, Cambridge, Conneaut, Cussewago, East Fairfield, East Fallowfield, East Mead, Fairfield, Greenwood, Hayfield, North Shenango, Oil Creek, Pine, Randolph, Richmond, Rockdale, Rome, Sadsbury, South Shenango, Sparta, Spring, Steuben, Summerhill, Summit, Troy, Union, Venango, Vernon, Wayne, West Fallowfield, West Mead, West Shenango and Woodcock and the boroughs of Blooming Valley, Cambridge Springs, Centerville, Cochranton, Conneaut Lake, Conneautville, Hydetown, Linesville, Saegertown, Spartansburg, Springboro, Townville, Venango and Woodcock; part of Erie County consisting of the city of Erie and the townships of Conneaut, Elk Creek, Fairview, Girard, Lake Erie, Millcreek Districts 03, 04, 05, 06, 07, 08, 09, 10, 13, 14, 15, 16, 17, 22 and 24 and Springfield and the boroughs of Albion, Cranesville, Girard, Lake City and Platea; part of Lawrence County consisting of the city of New Castle and the townships of Hickory, Mahoning, Neshannock, North Beaver,

Plain Grove, Pulaski, Scott, Shenango, Slippery Rock, Taylor, Union, Washington and Wilmington and the boroughs of Bessemer, New Wilmington, S.N.P.J., South New Castle and Volant and all of Mercer County.

(4) The Fourth District is composed of all of Adams County; part of Cumberland County consisting of the townships of East Pennsboro, Hampden, Lower Allen, Silver Spring and Upper Allen Precincts 01, 02, 03, 04, 05, 07, 08 and 10 and the boroughs of Camp Hill, Lemoyne, Mechanicsburg Ward 02 (Division 02), New Cumberland, Shiremanstown and Wormleysburg; part of Dauphin County consisting of the city of Harrisburg Wards 01 (Division 02), 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14 and 15 and the township of Susquehanna Wards 01 and 03 only blocks 4009, 4010, 4027, 4029, 4037 and 4038 of tract 022000 and all of York County.

(5) The Fifth District is composed of all of Cameron County; all of Centre County; part of Clarion County consisting of the townships of Ashland, Beaver, Clarion, Elk, Farmington, Highland, Knox, Limestone, Millcreek, Paint, Piney only blocks 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3013, 3014, 3015, 3021, 3024, 3026, 3030, 3031, 3032, 3037, 3038, 3039, 3044, 3046, 3056, 3136 and 3137 of tract 160500, Richland, Salem and Washington and the boroughs of Clarion, Emlenton (Clarion County Portion), Foxburg, Knox, Shippenville, St. Petersburg and Strattanville; all of Clearfield County; all of Clinton County; part of Crawford County consisting of the city of Titusville; all of Elk County; part of Erie County consisting of the city of Corry and the townships of Amity, Concord, Franklin, Greene, Greenfield, Harborcreek, Lawrence Park,

Leboeuf, McKean, Millcreek Districts 01, 02, 11, 12, 18, 19, 20, 21 and 23, North East, Summit, Union, Venango, Washington, Waterford and Wayne and the boroughs of Edinboro, Elgin, McKean, Mill Village, North East, Union City, Waterford, Wattsburg and Wesleyville; all of Forest County; part of Huntingdon County consisting of the townships of Barree, Brady, Franklin, Henderson, Jackson, Juniata, Logan, Miller, Morris, Oneida, Penn all blocks except 2102 of tract 950600, Porter, Shirley Districts Mount Union and Shirley, Smithfield, Spruce Creek, Union, Walker, Warriors Mark and West and the boroughs of Alexandria, Birmingham, Huntingdon, Mapleton, Mill Creek, Mount Union, Petersburg and Shirleysburg; all of Jefferson County; all of McKean County; all of Potter County; part of Tioga County consisting of the townships of Chatham, Clymer, Gaines and Shippen all blocks except 2016, 2017, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2105, 2106, 2107, 2108, 2109, 2110, 2116, 2132, 2133, 2134 and 2209 of tract 950900; all of Venango County and all of Warren County.

(6) The Sixth District is composed of part of Berks County consisting of the townships of Alsace, Bern, Colebrookdale, Cumru Districts 01 all blocks except 1000, 1001, 1003, 1004, 1005, 1006 and 1007 of tract 002600 and blocks 1018 and 1139 of tract 002900, 04, 06 and 07, District, Exeter, Heidelberg, Hereford District 02, Lower Alsace District 02, Lower Heidelberg, Maidencreek, Marion, Muhlenberg Districts 02, 03, 05, 06, 07, 08 and 09, North Heidelberg, Ontelaunee, Penn, Pike, Richmond, Rockland, Ruscombmanor, South Heidelberg, Spring Districts 05, 07 and 08 and Washington and the boroughs of Bally, Bechtelsville,

Bernville, Birdsboro, Boyertown, Fleetwood, Kenhorst, Laureldale District 01 all blocks except 4034, 4039 and 4045 of tract 012800, Leesport, Robesonia, Shillington, St. Lawrence, Wernersville, Womelsdorf and Wyomissing Districts 01, 02, 04 and 05; part of Chester County consisting of the townships of Caln Districts 01 and 04, Charlestown, East Bradford Districts North and South (Division 01), East Brandywine, East Caln, East Coventry, East Goshen, East Nantmeal, East Pikeland, East Vincent, East Whiteland, Easttown, North Coventry, Schuylkill, South Coventry, Thornbury, Tredyffrin, Upper Uwchlan, Uwchlan, West Bradford Precincts 01, 02 and 03, West Goshen, West Pikeland, West Vincent, West Whiteland, Westtown and Willistown and the boroughs of Downingtown, Malvern, Phoenixville, Spring City and West Chester; part of Lebanon County consisting of the city of Lebanon Wards 01, 02, 04, 05, 07, 08, 09 and 10 and the townships of Heidelberg, Jackson, Millcreek, North Lebanon District East only block 2039 of tract 002702, South Lebanon and West Cornwall and the boroughs of Cornwall, Myerstown and Richland and part of Montgomery County consisting of the townships of Douglass, Limerick, Lower Pottsgrove, Lower Providence, New Hanover, Perkiomen Districts 01 all blocks except 1045, 1046, 1047, 1048, 1057, 1059, 1061 and 1065 of tract 206501 and 02, Upper Hanover District 03, Upper Pottsgrove, Upper Providence, West Norriton Districts 01 (Division 01), 02 (Division 01) and 03 and West Pottsgrove and the boroughs of Collegeville, East Greenville, Pennsburg, Pottstown, Red Hill, Royersford, Schwenksville and Trappe.

(7) The Seventh District is composed of part of Berks

County consisting of the townships of Amity, Brecknock, Caernarvon, Cumru Districts 02, 03 and 05, Douglass, Earl, Oley, Robeson, Spring Districts 01, 06 and 11 and Union and the boroughs of Mohnton and New Morgan; part of Chester County consisting of the townships of Birmingham, Caln District 03, East Bradford District South (Division 02), Highland, Honey Brook, Kennett Precincts 01, 02 all blocks except 1003, 1004, 1005 and 1007 of tract 303301 and 04, London Britain, Londonderry, New Garden, Newlin, Penn, Pennsbury Districts North (Division 02) and South, Pocopson, Sadsbury District North, Upper Oxford, Wallace, Warwick, West Bradford Precincts 04 and 05, West Brandywine, West Caln, West Fallowfield, West Nantmeal and West Sadsbury and the boroughs of Atglen, Elverson and Honey Brook; part of Delaware County consisting of the city of Chester Ward 01 (Divisions 03, 06 and 07) and the townships of Aston, Bethel, Chadds Ford, Concord, Darby Wards 03 (Division 02), 04 and 05, Edgmont, Haverford, Lower Chichester, Marple, Middletown, Newtown, Radnor, Ridley Wards 01 (Divisions 01 and 03), 02, 03, 04, 05, 06, 07, 08 and 09, Springfield, Thornbury, Tinicum Wards 03 and 05, Upper Chichester, Upper Darby Districts 01, 02 (Divisions 02, 03, 04, 05, 06 and 07), 03 and 05 (Divisions 03, 04, 06, 07, 08 and 09) and Upper Providence and the boroughs of Aldan, Brookhaven, Chester Heights, Clifton Heights, Glenolden Precincts 01 and 06, Marcus Hook, Media, Morton, Norwood, Parkside, Prospect Park, Ridley Park, Rutledge and Trainer; part of Lancaster County consisting of the townships of Bart, Colerain, Leacock, Paradise, Sadsbury and Salisbury and the borough of Christiana and part of Montgomery County consisting of the

townships of East Norriton District 01 (Divisions 01, 03 and 04), Horsham Districts 02 (Divisions 02 all blocks except 2006 and 2027 of tract 200506, 03 and 04), 03 (Divisions 03 and 05) and 04 (Divisions 01, 02 and 03), Lower Gwynedd Districts 01 (Divisions 02 and 03) and 02 (Division 01), Perkiomen District 01 only blocks 1045, 1046, 1047, 1048, 1057, 1059, 1061 and 1065 of tract 206501, Plymouth Districts 01 (Division 01), 02 (Divisions 01, 02 and 03A) and 03 (Division 01), Skippack, Springfield Districts 03, 06 and 07 (Division 02), Towamencin, Upper Dublin Districts 02 (Division 01), 04 (Division 01), 06 (Division 02) and 07 (Divisions 01 and 02), Upper Gwynedd Districts 01, 02, 04, 05, 06 and 07, Upper Merion Districts Belmont (Divisions 02, 04 and 05), Gulph (Division 02) and Roberts, West Norriton Districts 01 (Division 02), 02 (Division 02) and 04, Whitemarsh Districts East and Middle (Division 05), Whitpain Districts 01, 02, 03, 05, 06, 07, 08, 11 and 12 and Worcester.

(8) The Eighth District is composed of all of Bucks County and part of Montgomery County consisting of the townships of Franconia, Hatfield all blocks except 3006 of tract 200704, Lower Frederick, Lower Salford, Marlborough, Salford, Upper Frederick, Upper Hanover Districts 01 and 02 and Upper Salford and the boroughs of Green Lane, Hatfield, Souderton and Telford (Montgomery County Portion).

(9) The Ninth District is composed of all of Bedford County; all of Blair County; part of Cambria County consisting of the townships of Allegheny, Barr District South only blocks 3001 and 3002 of tract 011800, Chest, Clearfield, Cresson, Dean, East Carroll District North, Elder, Gallitzin,

Munster, Reade, Susquehanna, West Carroll and White and the boroughs of Ashville, Chest Springs, Cresson, Gallitzin, Hastings, Loretto, Northern Cambria Wards 01, 02, 03 all blocks except 3026 of tract 011800, 04 and 05, Patton, Sankertown and Tunnelhill (Cambria County Portion); all of Fayette County; all of Franklin County; all of Fulton County; part of Greene County consisting of the townships of Cumberland, Dunkard, Greene, Jefferson, Monongahela and Morgan Districts Chart/t.grdn and Mather and the boroughs of Carmichaels, Clarksville, Greensboro, Jefferson and Rices Landing; part of Huntingdon County consisting of the townships of Carbon, Cass, Clay, Cromwell, Dublin, Hopewell, Lincoln, Penn only block 2102 of tract 950600, Shirley District Valley Pt., Springfield, Tell, Todd and Wood and the boroughs of Broad Top City, Cassville, Coalmont, Dudley, Marklesburg, Orbisonia, Rockhill, Saltillo, Shade Gap and Three Springs; all of Indiana County; part of Somerset County consisting of the townships of Addison, Allegheny, Brothersvalley, Elk Lick, Fairhope, Greenville, Larimer, Lower Turkeyfoot, Northampton, Southampton, Stonycreek and Summit and the boroughs of Addison, Berlin, Callimont, Confluence, Garrett, Indian Lake, Meyersdale, New Baltimore, Salisbury, Shanksville, Ursina and Wellersburg; part of Washington County consisting of the city of Monongahela and the townships of Carroll, East Bethlehem and Fallowfield Districts 01, 02 all blocks except 1030 of tract 781700, 03 and 04, and the boroughs of Allenport, Bentleyville, California, Centerville, Charleroi, Coal Center, Donora, Dunlevy, Elco, Long Branch, New Eagle, North Charleroi, Roscoe, Speers, Stockdale, Twilight and West Brownsville and

part of Westmoreland County consisting of the city of Monessen and the borough of North Belle Vernon.

(10) The Tenth District is composed of all of Bradford County; all of Juniata County; part of Lackawanna County consisting of the townships of Abington, Benton, Carbondale Districts Northeast and South, Clifton, Covington, Elmhurst, Fell, Glenburn, Greenfield, Jefferson, La Plume, Madison, Newton, North Abington, Ransom, Roaring Brook, Scott, South Abington and West Abington and the boroughs of Archbald Wards 02 and 03, Clarks Green, Clarks Summit, Dalton, Moscow, Olyphant Wards 03 (Division 02 all blocks except 1025 of tract 111400) and 04, Throop Ward 04 and Vandling; all of Lycoming County; all of Mifflin County; part of Monroe County consisting of the townships of Barrett, Jackson, Paradise, Pocono, Price and Stroud Districts 02, 03 and 04 and the boroughs of East Stroudsburg, Mount Pocono and Stroudsburg; part of Northumberland County consisting of the townships of Delaware, East Chillisquaque, Lewis, Point, Turbot and West Chillisquaque and the boroughs of McEwensville, Milton, Northumberland, Riverside only blocks 2032, 2035, 2043, 2100, 2102, 2103, 3037, 3038, 3039, 3043, 3050 and 3051 of tract 080700, Turbotville and Watsontown; part of Perry County consisting of the townships of Buffalo, Centre, Greenwood, Howe, Jackson, Juniata, Liverpool, Miller, North East Madison, Oliver, Saville, South West Madison, Toboyne, Tuscarora, Tyrone and Watts and the boroughs of Blain, Bloomfield, Landisburg, Liverpool, Millerstown, New Buffalo and Newport; all of Pike County; all of Snyder County; all of Sullivan County; all of Susquehanna County; part of Tioga County consisting of the townships of Bloss, Brookfield,

Charleston, Covington, Deerfield, Delmar, Duncan, Elk, Farmington, Hamilton, Jackson, Lawrence, Liberty, Middlebury, Morris, Nelson, Osceola, Putnam, Richmond, Rutland, Shippen only blocks 2016, 2017, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2105, 2106, 2107, 2108, 2109, 2110, 2116, 2132, 2133, 2134 and 2209 of tract 950900, Sullivan, Tioga, Union, Ward and Westfield and the boroughs of Blossburg, Elkland, Knoxville, Lawrenceville, Liberty, Mansfield, Roseville, Tioga, Wellsboro and Westfield; all of Union County and all of Wayne County.

(11) The Eleventh District is composed of part of Carbon County consisting of the townships of Banks, Kidder, Lausanne, Lehigh, Packer and Penn Forest and the boroughs of Beaver Meadows, East Side and Weatherly; all of Columbia County; part of Cumberland County consisting of the townships of Cooke, Dickinson, Hopewell, Lower Frankford, Lower Mifflin, Middlesex, Monroe, North Middleton, North Newton, Penn, Shippensburg, South Middleton, South Newton, Southampton, Upper Allen Precincts 06 and 09, Upper Frankford, Upper Mifflin and West Pennsboro and the boroughs of Carlisle, Mechanicsburg Wards 01, 02 (Division 01), 03, 04 and 05, Mount Holly Springs, Newburg, Newville and Shippensburg (Cumberland County Portion); part of Dauphin County consisting of the city of Harrisburg Ward 01 (Divisions 01 and 03) and the townships of Halifax, Jackson, Jefferson, Lower Paxton, Lower Swatara, Lykens, Middle Paxton, Mifflin, Reed, Rush, Susquehanna Wards 02, 03 all blocks except 4009, 4010, 4027, 4029, 4037 and 4038 of tract 022000, 04, 05, 06, 07, 08 and 09, Swatara, Upper Paxton, Washington, Wayne, West Hanover District 01, Wiconisco and

Williams and the boroughs of Berrysburg, Dauphin, Elizabethville, Gratz, Halifax, Highspire, Lykens, Millersburg, Paxtang, Penbrook, Pillow, Steelton and Williamstown; part of Luzerne County consisting of the cities of Hazleton and Nanticoke and the townships of Bear Creek, Black Creek, Buck, Butler, Conyngham, Dallas, Dennison, Dorrance, Exeter, Fairmount, Fairview, Foster, Franklin, Hanover, Hazle, Hollenback, Hunlock, Huntington, Jackson, Kingston, Lake, Lehman, Nescopeck, Newport, Plymouth, Rice, Ross, Salem, Slocum, Sugarloaf, Union and Wright and the boroughs of Ashley, Bear Creek Village, Conyngham, Courtdale, Dallas, Edwardsville, Forty Fort, Freeland, Harveys Lake, Jeddo, Kingston, Larksville, Laurel Run, Luzerne, Nescopeck, New Columbus, Nuangola, Penn Lake Park, Plymouth, Pringle, Shickshinny, Sugar Notch, Swoyersville, Warrior Run, West Hazleton and White Haven; all of Montour County; part of Northumberland County consisting of the cities of Shamokin and Sunbury and the townships of Coal, East Cameron, Jackson, Jordan, Little Mahanoy, Lower Augusta, Lower Mahanoy, Mount Carmel, Ralpho, Rockefeller, Rush, Shamokin, Upper Augusta, Upper Mahanoy, Washington, West Cameron and Zerbe and the boroughs of Herndon, Kulpmont, Marion Heights, Mount Carmel, Riverside all blocks except 2032, 2035, 2043, 2100, 2102, 2103, 3037, 3038, 3039, 3043, 3050 and 3051 of tract 080700 and Snydertown; part of Perry County consisting of the townships of Carroll, Penn, Rye, Spring and Wheatfield and the boroughs of Duncannon and Marysville and all of Wyoming County.

(12) The Twelfth District is composed of part of Allegheny County consisting of the townships of Aleppo, Fawn,

Frazer, Hampton, Harrison Wards 01 (Divisions 02 and 03), 03, 04 and 05 (Division 02), Indiana, Kilbuck, Marshall, McCandless, O'Hara, Ohio, Pine, Reserve, Richland, Ross, Shaler and West Deer and the boroughs of Aspinwall, Bell Acres, Bradford Woods, Fox Chapel, Franklin Park, Glen Osborne, Haysville, Monroeville Wards 03 (Divisions 01 and 04) and 04 (Division 03), Plum, Sewickley, Sewickley Heights, Sewickley Hills and West View; all of Beaver County; part of Cambria County consisting of the city of Johnstown and the townships of Adams, Barr Districts North and South all blocks except 3001 and 3002 of tract 011800, Blacklick, Cambria, Conemaugh, Croyle, East Carroll District South, East Taylor, Jackson, Lower Yoder, Middle Taylor, Portage, Richland, Stonycreek, Summerhill, Upper Yoder, Washington and West Taylor and the boroughs of Brownstown, Carrolltown, Cassandra, Daisytown, Dale, East Conemaugh, Ebensburg, Ehrenfeld, Ferndale, Franklin, Geistown, Lilly, Lorain, Nanty Glo, Northern Cambria Ward 03 only block 3026 of tract 011800, Portage, Scalp Level, South Fork, Southmont, Summerhill, Vintondale, Westmont and Wilmore; part of Lawrence County consisting of the townships of Little Beaver, Perry and Wayne and the boroughs of Ellport, Ellwood City (Lawrence County Portion), Enon Valley, New Beaver and Wampum; part of Somerset County consisting of the townships of Black, Conemaugh, Jefferson, Jenner, Lincoln, Middlecreek, Milford, Ogle, Paint, Quemahoning, Shade, Somerset and Upper Turkeyfoot and the boroughs of Benson, Boswell, Casselman, Central City, Hooversville, Jennerstown, New Centerville, Paint, Rockwood, Seven Springs (Somerset County Portion), Somerset, Stoystown and Windber and part of Westmoreland

County consisting of the city of Lower Burrell and the townships of Allegheny, Bell, Derry, Fairfield, Loyalhanna, Salem, St. Clair, Upper Burrell and Washington and the boroughs of Avonmore, Bolivar, Delmont, Derry, East Vandergrift, Export, Hyde Park, Murrysville, New Alexandria, New Florence, Oklahoma, Seward, Vandergrift and West Leechburg.

(13) The Thirteenth District is composed of part of Montgomery County consisting of the townships of Abington, Cheltenham, East Norriton Districts 01 (Division 02) and 02, Hatfield District 05 (Division 02 only block 3006 of tract 200704), Horsham Districts 01, 02 (Divisions 01 and 02 only blocks 2006 and 2027 of tract 200506), 03 (Divisions 01, 02 and 04) and 04 (Division 04), Lower Gwynedd Districts 01 (Divisions 01 and 04) and 02 (Division 02), Lower Merion Ward 02 (Division 02 only blocks 1000, 1001, 1002 and 1021 of tract 204800), Lower Moreland, Montgomery, Plymouth Districts 01 (Division 02), 02 (Divisions 03B and 03C), 03 (Divisions 02 and 03) and 04, Springfield Districts 01, 02, 04, 05 and 07 (Division 01), Upper Dublin Districts 01, 02 (Divisions 02 and 03), 03, 04 (Divisions 02 and 03), 05 (Divisions 01, 02 and 03), 06 (Divisions 01, 03A and 03B) and 07 (Division 03), Upper Gwynedd District 03, Upper Merion Districts Belmont (Divisions 01 and 03), Candlebrook, Gulph (Division 01), King, Swedeland and Swedesburg, Upper Moreland, Whitemarsh Districts Middle (Divisions 01, 02, 03 and 04) and West and Whitpain Districts 04, 09 and 10 and the boroughs of Ambler, Bridgeport, Bryn Athyn, Conshohocken, Hatboro, Jenkintown, Lansdale, Norristown, North Wales, Rockledge and West Conshohocken and part of Philadelphia County consisting of

the city of Philadelphia Wards 23, 35, 42, 53, 54 (Divisions 01, 02, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 17, 18 and 22), 55 (Division 24), 56, 57 (Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28), 58, 61 (Divisions 03, 04, 05, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 25, 26, 27 and 28), 62 (Divisions 10 and 20), 63, 64 (Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 15, 16, 17 and 18) and 66.

(14) The Fourteenth District is composed of part of Allegheny County consisting of the cities of Clairton, Duquesne, McKeesport and Pittsburgh and the townships of Baldwin, East Deer, Harmar, Harrison Wards 01 (Division 01), 02 and 05 (Division 01), Kennedy, Neville, North Versailles, Penn Hills, Robinson Districts 03 and 05, Springdale, Stowe and Wilkins and the boroughs of Avalon, Baldwin, Bellevue, Ben Avon, Ben Avon Heights, Blawnox, Brackenridge, Braddock, Braddock Hills, Brentwood, Chalfant, Cheswick, Churchill, Coraopolis, Crafton, Dormont, Dravosburg, East McKeesport, East Pittsburgh, Edgewood, Emsworth, Etna, Forest Hills, Glassport, Glenfield, Green Tree, Homestead, Ingram, Liberty, Lincoln, McKees Rocks, Millvale, Monroeville Wards 01, 02 (Division 02), 03 (Division 03), 05 (Divisions 01, 02 and 04), 06 and 07, Mount Oliver, Munhall, North Braddock, Oakmont, Pitcairn, Port Vue, Rankin, Sharpsburg, Springdale, Swissvale, Tarentum, Trafford (Allegheny County Portion), Turtle Creek, Verona, Versailles, Wall, West Homestead, West Mifflin, Whitaker, White Oak, Whitehall District 01 only blocks 2006, 2008 and 2009 of tract 477200, Wilkinsburg and Wilmerding and part of Westmoreland County consisting of the

cities of Arnold and New Kensington.

(15) The Fifteenth District is composed of part of Berks County consisting of the townships of Albany, Bethel, Centre, Greenwich, Hereford District 01, Jefferson, Longswamp, Maxatawny, Perry, Tilden, Tulpehocken, Upper Bern, Upper Tulpehocken and Windsor and the boroughs of Centerport, Hamburg, Kutztown, Lenhartsville, Lyons, Shoemakersville, Strausstown and Topton; part of Dauphin County consisting of the townships of Conewago, Derry, East Hanover, Londonderry, South Hanover and West Hanover Districts 02, 03 and 04 and the boroughs of Hummelstown, Middletown and Royalton; part of Lebanon County consisting of the city of Lebanon Wards 03 and 06 and the townships of Annville, Bethel, East Hanover, North Annville, North Cornwall, North Lebanon Districts East all blocks except 2039 of tract 002702, Middle and West, North Londonderry, South Annville, South Londonderry, Swatara, Union and West Lebanon and the boroughs of Cleona, Jonestown, Mount Gretna and Palmyra; all of Lehigh County and part of Northampton County consisting of the city of Bethlehem (Northampton County Portion) Wards 01, 02, 03, 04, 05, 06, 07, 08, 09, 14, 15, 16 and 17 blocks 1026, 1123, 2018 and 2055 of tract 011300 and the townships of Allen, Bushkill, East Allen, Hanover, Lehigh, Lower Nazareth, Lower Saucon, Moore, Plainfield Districts Belfast, Kesslersville and Plainfield Church, Upper Nazareth District West and Williams and the boroughs of Bath, Chapman, Hellertown, North Catasauqua, Northampton and Walnutport.

(16) The Sixteenth District is composed of part of Berks County consisting of the city of Reading and the townships of Cumru District 01 only blocks 1000, 1001, 1003, 1004, 1005,

1006 and 1007 of tract 002600 and blocks 1018 and 1139 of tract 002900, Lower Alsace District 01, Muhlenberg Districts 01 and 04 and Spring Districts 02, 03, 04, 09, 10 and 12 and the boroughs of Adamstown (Berks County Portion), Laureldale Districts 01 only blocks 4034, 4039 and 4045 of tract 012800 and 02, Mount Penn, Sinking Spring, West Reading and Wyomissing District 03; part of Chester County consisting of the city of Coatesville and the townships of Caln District 02, East Fallowfield, East Marlborough, East Nottingham, Elk, Franklin, Kennett Precinct 02 only blocks 1003, 1004, 1005 and 1007 of tract 303301 and 03, London Grove, Lower Oxford, New London, Pennsbury District North (Division 01), Sadsbury District South, Valley, West Marlborough and West Nottingham and the boroughs of Avondale, Kennett Square, Modena, Oxford, Parkesburg, South Coatesville and West Grove and part of Lancaster County consisting of the city of Lancaster and the townships of Brecknock, Caernarvon, Clay, Conestoga, Conoy, Drumore, Earl, East Cocalico, East Donegal, East Drumore, East Earl, East Hempfield, East Lampeter, Eden, Elizabeth, Ephrata, Fulton, Lancaster, Little Britain, Manheim, Manor, Martic, Mount Joy, Penn, Pequea, Providence, Rapho, Strasburg, Upper Leacock, Warwick, West Cocalico, West Donegal, West Earl, West Hempfield and West Lampeter and the boroughs of Adamstown (Lancaster County Portion), Akron, Columbia, Denver, East Petersburg, Elizabethtown, Ephrata, Lititz, Manheim, Marietta, Millersville, Mount Joy, Mountville, New Holland, Quarryville, Strasburg and Terre Hill.

(17) The Seventeenth District is composed of part of Carbon County consisting of the townships of East Penn,

Franklin, Lower Towamensing, Mahoning and Towamensing and the boroughs of Bowmanstown, Jim Thorpe, Lansford, Lehighton, Nesquehoning, Palmerton, Parryville, Summit Hill and Weissport; part of Lackawanna County consisting of the cities of Carbondale and Scranton and the townships of Carbondale District Northwest, Spring Brook and Thornhurst and the boroughs of Archbald Wards 01 and 04, Blakely, Dickson City, Dunmore, Jermyn, Jessup, Mayfield, Moosic, Old Forge, Olyphant Wards 01, 02 and 03 (Divisions 01 and 02 only block 1025 of tract 111400), Taylor and Throop Wards 01, 02 and 03; part of Luzerne County consisting of the cities of Pittston and Wilkes-Barre and the townships of Jenkins, Pittston, Plains and Wilkes-Barre and the boroughs of Avoca, Dupont, Duryea, Exeter, Hughestown, Laflin, West Pittston, West Wyoming, Wyoming and Yatesville; part of Monroe County consisting of the townships of Chestnuthill, Coolbaugh, Eldred, Hamilton, Middle Smithfield, Polk, Ross, Smithfield, Stroud Districts 01, 05, 06 and 07, Tobyhanna and Tunkhannock and the borough of Delaware Water Gap; part of Northampton County consisting of the cities of Bethlehem (Northampton County Portion) Ward 17 all except blocks 1026, 1123, 2018 and 2055 of tract 011300 and Easton and the townships of Bethlehem, Forks, Lower Mount Bethel, Palmer, Plainfield District Delabole, Upper Mount Bethel, Upper Nazareth District East and Washington and the boroughs of Bangor, East Bangor, Freemansburg, Glendon, Nazareth, Pen Argyl, Portland, Roseto, Stockertown, Tatamy, West Easton, Wilson and Wind Gap and all of Schuylkill County.

(18) The Eighteenth District is composed of part of Allegheny County consisting of the townships of Collier,

Crescent, Elizabeth, Findlay, Forward, Leet, Moon, Mount Lebanon, North Fayette, Robinson Districts 01, 02, 04, 06, 07, 08 and 09, Scott, South Fayette, South Park, South Versailles and Upper St. Clair and the boroughs of Bethel Park, Bridgeville, Carnegie, Castle Shannon, Edgeworth, Elizabeth, Heidelberg, Jefferson Hills, Leetsdale, McDonald (Allegheny County Portion), Monroeville Wards 02 (Divisions 01 and 03), 03 (Division 02), 04 (Divisions 01 and 02) and 05 (Division 03), Oakdale, Pennsbury Village, Pleasant Hills, Rosslyn Farms, Thornburg, West Elizabeth, and Whitehall Districts 01 all blocks except 2006, 2008 and 2009 of tract 477200, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15 and 16; part of Greene County consisting of the townships of Aleppo, Center, Franklin, Freeport, Gilmore, Gray, Jackson, Morgan District Lippencott, Morris, Perry, Richhill, Springhill, Washington, Wayne and Whiteley and the borough of Waynesburg; part of Washington County consisting of the city of Washington and the townships of Amwell, Blaine, Buffalo, Canton, Cecil, Chartiers, Cross Creek, Donegal, East Finley, Fallowfield District 02 only block 1030 of tract 781700, Hanover, Hopewell, Independence, Jefferson, Morris, Mount Pleasant, North Bethlehem, North Franklin, North Strabane, Nottingham, Peters, Robinson, Smith, Somerset, South Franklin, South Strabane, Union, West Bethlehem, West Finley and West Pike Run and the boroughs of Beallsville, Burgettstown, Canonsburg, Claysville, Cokeburg, Deemston, East Washington, Ellsworth, Finleyville, Green Hills, Houston, Marianna, McDonald (Washington County Portion), Midway and West Middletown and part of Westmoreland County consisting of the cities of Greensburg, Jeannette and Latrobe

and the townships of Cook, Donegal, East Huntingdon, Hempfield, Ligonier, Mount Pleasant, North Huntingdon, Penn, Rostraver, Sewickley, South Huntingdon and Unity and the boroughs of Adamsburg, Arona, Donegal, Hunker, Irwin, Laurel Mountain, Ligonier, Madison, Manor, Mount Pleasant, New Stanton, North Irwin, Penn, Scottdale, Smithton, South Greensburg, Southwest Greensburg, Sutersville, Trafford (Westmoreland County Portion), West Newton, Youngstown and Youngwood.] (Reserved).

Section 2. This act shall take effect in 60 days.

EXHIBIT B

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

JACOB CORMAN, in his official capacity as Majority Leader of the Pennsylvania Senate, MICHAEL FOLMER, in his official capacity as Chairman of the Pennsylvania Senate State Government Committee, LOU BARLETTA, RYAN COSTELLO, MIKE KELLY, TOM MARINO, SCOTT PERRY, KEITH ROTHFUS, LLOYD SMUCKER, and GLENN THOMPSON, Plaintiffs, v. ROBERT TORRES, in his official capacity as Acting Secretary of the Commonwealth; JONATHAN M. MARKS, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation, Defendants.	CIVIL ACTION No. 1:18-cv-00443-CCC-KAJ-JBS Three-Judge Panel Pursuant to 28 U.S.C. § 2284(a) Circuit Judge Kent Jordan Chief Judge Christopher Conner District Judge Jerome Simandle

AFFIDAVIT OF JONATHAN M. MARKS

Jonathan M. Marks, being duly sworn, deposes and says:

Background

1. I am Commissioner of the Bureau of Commissions, Elections and Legislation (the "Bureau"), a bureau of the Commonwealth's Department of State (the "Department").

2. I was appointed to the position of Commissioner in October 2011.

3. I have been with the Bureau since the Fall of 2002.

4. From 2008 to 2011, I served as the Chief of the Division of the Statewide Uniform Registry of Electors.

5. Prior to that, from 2004 to 2008, I served as the Chief of the Division of Elections.

6. I am responsible for overseeing the day to day operations of the Bureau, which include election administration.

7. I have supervised the administration of the Department's duties in more than 20 regularly scheduled elections and a number of special elections.

Development of the Current Primary Election Schedule

8. The next congressional primary is scheduled for May 15, 2018.

9. A number of preliminary steps must take place well in advance of the primary. For example, the candidates must circulate and file nomination petitions; the Pennsylvania Commonwealth Court must hear any objections to those petitions; the Department of State must send lists of candidates' names to the

County Boards of Elections; and the County Boards of Elections must prepare balloting materials and send them to military and overseas voters.

10. All of these steps must be carefully coordinated to comply with deadlines required under state or federal law.

11. Because of the large number of entities that play a role in this process, the large amounts of data involved, and the critical importance of fair and well-run elections, the Bureau plans every detail of the process to ensure maximum accuracy.

12. In June of 2017, the League of Women Voters of Pennsylvania and other Petitioners brought suit in the Pennsylvania Commonwealth Court, contending that the congressional district boundaries enacted in 2011 violated the Pennsylvania Constitution.

13. As the suit progressed, it became clear that it would not be possible to put a new congressional map in place and maintain the existing calendar for preparing for the congressional primary elections. Under that calendar, the petition circulation and filing period for congressional seats was to begin on February 13, 2018.

14. I and my team carefully considered whether it would be possible to postpone that date, and other dates on the elections calendar, in order to allow the Pennsylvania courts to grant relief, if any, in time for the May 15 primaries.

15. We concluded that through a combination of internal administrative adjustments and court-ordered date changes, it would be possible to hold the primaries on the scheduled May 15 date as long as a new plan was put into place no later than February 20, 2018.

16. We determined that of the options we considered, which included postponing the entire primary and "bifurcating" the primary (postponing the congressional primary elections but holding elections for other offices on the original May 15 date), "bifurcating" the ballot access deadlines for congressional candidates and all other candidates was by far the least disruptive and expensive option for counties, candidates and the Department.

17. "Bifurcating" in this context means to postpone the following dates for congressional candidates, but not for other candidates: the date to circulate and file nomination petitions, the ballot position lottery date, candidates' last day for withdrawal, and the final dates by which, if possible, the Commonwealth Court will hear and rule on objections to nomination petitions.

18. On December 14, 2017, I submitted an affidavit to the Commonwealth Court that explained these potential adjustments. A true and correct copy of this affidavit is attached as Exhibit 1.

19. In my affidavit, I informed the court that "it would be possible to hold the primaries on the scheduled May 15 date even if a new plan is not put into place until on or before February 20." Ex. 1 at ¶ 14.

20. On January 22, 2018, the Pennsylvania Supreme Court issued an order enjoining use of the then-current congressional districting map (the "2011 Plan"). The Order provided, in part, that Governor Thomas Wolf, Acting Secretary of State Robert Torres, and I (together, the "Executive Branch Respondents") were

> advised to anticipate that a congressional districting plan will be available by **February 19, 2018,** and are directed to take all measures, including adjusting the election calendar if necessary, to ensure that the May 15, 2018 primary election takes place as scheduled under that remedial districting plan.

Compl., Ex. B at 3 (emphasis in original).

21. In response to the January 22 Order, the Department added a notice to its website posting new ballot access deadlines that applied only to congressional candidates. *See* http://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Pages/Petition-Notice.aspx. A true and correct copy of this Notice is attached as Exhibit 2. Deadlines for other elected offices remain unchanged.

22. The Department and the Bureau engaged in intensive internal planning efforts to ensure that once a new map issued, they could act as swiftly and efficiently as possible to put that map in place.

23. On February 15, the Department filed an Application asking the Pennsylvania Supreme Court to approve revised ballot access deadlines for the congressional elections.

24. The Pennsylvania Supreme Court granted the requested relief on February 19, 2018. *See* Compl., Ex. J.

25. The first ballot access deadline on the revised calendar was Tuesday, February 27, which was the first day for candidates to circulate and file nomination petitions.

The Department and Bureau's Implementation of the Current Plan

Database and Systems Updates

26. The Pennsylvania Supreme Court issued a .pdf image and data files for the new congressional redistricting map (the "Current Plan") on Monday, February 19, 2018.

27. As it had long planned to do, the Bureau immediately began taking steps to incorporate the new map into its database and to inform candidates, the County Boards of Elections, and the public about it.

28. The Bureau had the data files converted into lists of precincts and, between Tuesday, February 20, and Thursday, February 22, updated the elections system database with the new precincts lists.

29. By Thursday, February 22, the Bureau had completed and verified these updates.

30. Also on February 22, the Bureau posted nomination petitions on the Department of State website. *See* http://www.dos.pa.gov/VOTINGELECTIONS/CANDIDATESCOMMITTEES/RUNNINGFOROFFICE/Pages/default.aspx. A true and correct copy of this webpage is attached as Exhibit 3.

31. As of March 1, a total of 150 candidates had created and downloaded nomination petitions from this website. Petitions, which are specifically tailored to the congressional districts in the Current Plan, were downloaded for every congressional district.

32. The Department completed its update to the voter registration files in the Statewide Uniform Registry of Electors ("SURE") system on February 23. Of the 8,436,596 voter registration files in the SURE system, the overwhelming majority (8,347,549) were captured in this update. This process allows candidates to obtain updated voter lists from the Department or from the County Boards of Elections.

33. In the 14 counties where voting districts are split, the work of updating voter registration files in the SURE system is done by the County Boards of Elections. The Department has communicated with the County Boards of Elections of the 14 affected counties to ensure that they have the information

necessary to enter accurate updates. Four of those counties have already completed all of their updates.

34. Individual counties with voting district splits are working to complete the remaining SURE system updates on voter registration records in one municipality and 20 voting districts. These remaining updates represent less than one percent of the voter registration files in the SURE system. The Department of State expects this work to be completed over the course of the next several days, but no later than early during the week of March 5. As these are updates are completed, and to ensure candidates have access to voter lists that are as accurate as possible, the Department has made its voter lists available daily at no additional cost to those who have already purchased the list.

Efforts to Educate Candidates and Voters

35. On February 22, 2018, in compliance with the Pennsylvania Supreme Court's February 19 Order, Acting Secretary Torres filed a certified copy of the textual description of the Current Plan with the Pennsylvania Supreme Court.

36. The Department also posted the textual description of the Current Plan on its website, along with an interactive version of the Current Plan overlaid on Google Maps. *See* http://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Pages/remedial-interactive-map.aspx. A true and correct copy of this webpage is attached as Exhibit 4.

37. The Department has also published information on its website regarding the differences between the 2011 Plan and the Current Plan. This information includes images of the old and new maps. *See* Ex. 2.

38. This page on the Department's site also links to eighteen pages with detailed images and descriptions of each of the new districts in the Current Plan. A true and correct copy of these pages is attached as Exhibit 5.

39. Additionally, notice of the textual description of the Current Plan is scheduled to be published in the *Pennsylvania Bulletin* on March 3, 2018.

40. The Department has updated its website with a link to the section of the Pennsylvania Supreme Court's website that contains shape files, images and the textual description of the Current Plan.

41. The Department has issued the following press releases:

- "Department of State Implementing PA Supreme Court's Remedial Congressional Map," Feb. 20, 2018, http://www.media.pa.gov/Pages/State-Details.aspx?newsid=263. A true and correct copy of this press release is attached as Exhibit 6.

- "Petition Packets for Congressional Candidates to Be Available Thursday," Feb. 21, 2018, http://www.media.pa.gov/Pages/State-Details.aspx?newsid=265. A true and correct copy of this press release is attached as Exhibit 7.

42. I conducted an interview regarding the Department's efforts to implement the Current Plan; video and audio of the interview are available on the Department of General Services' website. *See*

https://www.winstormdp.com/eMercial/view/html5/index.php?client=CMS&projectName=PINS&emercialID=6203&preview=No&recipient=ellyon@pa.gov.

43. The Department has also commenced a social media campaign to ensure that accurate information about the current map is as widely available as possible.

44. For example, on February 22, 2018, the following statement from Acting Secretary Torres was posted on the Department's Facebook page: "Voters will not see any changes in their polling places because of the court's order and new map. Nor will there be any change in the rules in effect at polling place." *See* https://www.facebook.com/PADepartmentofState/photos/a.184457985020155.49480.171524799646807/1246479472151329/?type=3&theater. A true and correct copy of this post is attached as Exhibit 8.

45. Between February 19 and February 27, the Department issued 11 social media posts about the Current Plan, posting each to Facebook and Twitter. These posts were viewed tens of thousands of times.

46. Between February 20 and February 27, pursuant to section 906 of the Election Code, 25 P.S. § 2866, the County Boards of Elections were required at their expense to publish in newspapers the names of all public offices, including the congressional districts, for which nominations are to be made.

47. Finally, after prior redistrictings, the Pennsylvania General Assembly has required the Pennsylvania Department of State to publish textual descriptions of new congressional districts in at least one newspaper of general circulation in each county in which such newspapers are published.

48. Although the Pennsylvania Supreme Court has not ordered such publication, the Department has arranged to publish the textual descriptions of the new congressional districts in at least one newspaper of general circulation in each county in the Commonwealth, at an estimated cost of $150,000.

Implementation of the Current Plan by County Elections Officials

49. The Commissioner's role involves dealing closely with county elections officials.

50. I have not heard any reports from county officials that they have been unable to implement or have had difficulty implementing the Current Plan.

51. From the county officials' point of view, preparations for the May 2018 primary election are proceeding in a way very similar to preparations for other elections. The only extra work that implementation of the Current Plan required the counties to carry out was data entry relating to the SURE system in the fourteen counties that are split by the Current Plan.

52. The Current Plan will not require relocation of any polling places or changes to any of the rules that county officials must follow on election day.

Military and Overseas Absentee Voters

53. In their Motion, Plaintiffs discuss the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 52 U.S.C. §§ 20301 *et seq.*

54. The Department is deeply familiar with the requirements of UOCAVA and their interplay with other federal statutes and related provisions of the Pennsylvania Election Code.

55. The Department has published a 21-page protocol on its website, which explains the procedures that the Department and County Boards of Elections should follow to comply with UOCAVA. *See* http://www.dos.pa.gov/VotingElections/Documents/Elections%20Division/Administration/protocol%20%20%20%20%208%2019%2012.pdf (the "UOCAVA Protocol"). A true and correct copy of this protocol is attached as Exhibit 9.

56. Under state and federal law, if the primary election date remains May 15, then March 26, 2018, is the deadline by which County Boards of Elections must begin to transmit absentee ballots and balloting materials to those military-overseas voters in extremely remote or isolated areas who have submitted applications. *See* Compl., Ex. J, Appendix C.

57. Under state and federal law, if the primary election date remains May 15, then March 30, 2018, 45 days prior to the election, is the deadline by which

County Boards Elections must begin to transmit absentee ballots and balloting materials to all military-overseas voters who have submitted applications. *See id.*

58. The U.S. Department of Justice actively monitors state compliance with UOCAVA in federal election years. Pennsylvania, through my office, must report to the U.S. Department of Justice by the 43rd day prior to each of the 2018 federal elections whether each local jurisdiction sent its absentee ballots to eligible military and overseas voters by the 45-day deadline.

59. Pennsylvania law provides that in the frequent circumstance when counties are not able to print final ballots in time for the deadline for absentee ballot mailing, counties must prepare and send "special write-in ballots." As described by section 1303(d) of the Election Code, "special write-in ballots" are to be "substantially [in] the form of [the] official absentee ballots *except that [the] special write-in absentee ballots shall contain blank spaces only under the titles of [the] offices in which electors may insert the names of the candidates for whom they desire to vote*...." 25 P.S. § 3146.3(d) (emphasis added). With the special write-in ballot, the County Boards of Elections are directed by the statute to "furnish to electors lists containing the names of all candidates ... who have been regularly nominated under [the Election Code], for the use of [the qualified absentee military electors] in preparing their ballots." This list is to include the

names of the candidates provided to the County Board of Elections by the Secretary of the Commonwealth.

60. UOCAVA also provides for a blank write-in absentee ballot that qualified voters can use to vote in federal elections. 52 U.S.C. § 20303(a). This federal write-in absentee ballot can be used by military and overseas citizens if they do not receive their state absentee ballot in enough time to meet the state's deadlines.

61. Additionally, under the Uniform Military and Overseas Voters Act ("UMOVA"), each County Board of Election must prepare, update and make publicly available an election notice for use with military-overseas write-in absentee ballots that contains a list of the offices expected to be on the ballot with the names of the candidates for each office. *See* 25 Pa.C.S. § 3514.

62. Under the revised calendar, the time between March 20, which is the last day for congressional candidates to file nomination petitions, and March 26, the day by which County Boards of Elections must begin to deliver absentee ballots to certain military voters and overseas civilian voters, has been compressed by two weeks. The revised calendar provides adequate time for the Secretary to send, by the regular statutory deadline of March 26, *see* 25 P.S. § 3146.3(a), a list of candidates known to exist at the time, and for counties to prepare special write-

in absentee ballots and accompanying candidate lists, as anticipated by the Election Code.

63. It is not unusual for the candidate lists to remain "in flux" beyond the last day for counties to deliver absentee ballots or special write-in absentee ballots, if necessary, to certain military and overseas civilian voters.

64. Nomination petition objections cases often remain unresolved past the deadline for counties to transmit absentee ballots to military and overseas civilian voters.

65. In 2016, for example, hearings in multiple objections cases were not even scheduled by the Commonwealth Court of Pennsylvania until *after* the March 7 and March 11 deadlines to transmit absentee ballots to military and overseas civilian absentee voters. That year, nine hearings were scheduled between March 7 and March 10; another thirty-eight hearings were scheduled between March 11 and April 4. *See, e.g.*, Order, *In re: Nomination Pet. Of Brian Weismantle, Democratic Candidate for Rep. in the Gen. Assemb. from the 20th Legis. Dist.*, No. 121 M.D. 2016 (Pa. Cmwlth. Feb. 24, 2016) (hearing set for March 16, 2016); Order, *In re: Nomination Pets. of Brian A. Gordon as a Democratic Candidate for Congress in the 2nd Congressional Dist.*, No. 112 M.D. 2016 (Pa. Cmwlth. Feb. 24, 2016) (hearing set for March 17, 2016). The same was true in 2014, when the relevant deadlines were March 31 and April 4; seventeen hearings were scheduled

between March 31 and April 3 and another seventeen were scheduled between April 7 and April 17. *See, e.g.,* Order, *In re: Nomination Pets. of Wanda L. Bechtold as Candidate for State Rep. in the 102nd Legis. Dist.*, No. 148 M.D. 2014 (Pa. Cmwlth. Mar. 19, 2014) (hearing set for April 3, 2014); Order, *In re: Pet. of Mel M. Marin for the Democratic Nomination for Member of Congress in the 3rd Congressional Dist.*, No. 174 M.D. 2014 (Pa. Cmwlth. Mar. 19, 2014) (hearing set for April 10, 2014).

66. As a result, late changes to the ballot are common. In 2014, the Pennsylvania Supreme Court removed a Republican gubernatorial candidate from the ballot 19 days before the primary, *see In re Guzzardi*, 91 A.3d 701 (Pa. 2014), and in 2016, it reinstated a Democratic candidate for U.S. Senate on the ballot one week before the primary. *See In re Vodvarka*, 135 A.3d 1017 (Pa. 2016).

67. Further, courts have also permitted candidates to voluntarily withdraw well beyond the 45-day deadline for delivering military and overseas civilian absentee ballots. In 2016, the Commonwealth Court allowed one congressional candidates to withdraw 26 days before the primary, *see In re Nomination Pet. of Candidate Steven B. Larchuck as Candidate for the Democratic Nomination for Congress from the 12th Congressional District* (Pa. Cmwlth., No. 221 M.D. 2016, filed March 31, 2016), and another congressional candidate to withdraw a day later—25 days before the primary, *see In re Nomination Pet. of Lindy Li, as*

Candidate for the Democratic Nomination for Representative in Congress from the 6th District (Pa. Cmwlth, No. 105 M.D. 2016, filed April 1, 2016).

68. For absentee ballots that were delivered or mailed *before* the courts issued orders removing the names of candidates or permitting candidates to withdraw late from the ballot, the Department has historically directed County Boards of Elections to count votes cast for those candidates as write-in votes so as to not disenfranchise any absentee voters.

69. Regarding absentee ballots distributed *after* the court orders a candidate removed from the ballot, either through an objection or late withdrawal, and to the extent the County Boards of Elections cannot physically remove the candidate's name from the ballot, the County Boards of Elections have been directed to include a notice with the absentee ballot that the candidate is no longer on the ballot and that a vote cast for the candidate, other than a write-in vote, will not be counted.

Effect of an Order to Hold the 2018 Primary Under the 2011 Plan

70. It will not be possible to hold the 2018 congressional primary as scheduled if it must proceed under any map other than the Current Plan.

71. If use of a different map (including the 2011 Plan) is ordered, candidates will not have sufficient time to circulate petitions, collect signatures,

and submit nomination petitions before the County Boards of Elections' March 26 absentee ballot deadline.

72. To ensure that the Current Plan could be instated in time for a May 15 primary, the Department shortened its implementation schedule in order to gain additional time in the elections calendar. That time has now been spent.

73. Implementing a new map or reverting to the 2011 Plan in the middle of the current circulation period will cause particularly significant confusion and delay, because it is likely to result in competing sets of nomination petitions. At the moment, 150 candidates are circulating petitions and collecting signatures based on the Current Plan. If different districts are ordered during this time period, or the 2011 Plan is reinstated, a second set of petitions will begin circulating. The Department will have to either reject petitions for the districts that no longer exist, or manually review those petitions to see if they have enough signatures to gain ballot access under the operative map. Nomination objections are likely to increase exponentially as a result.

74. Implementing a different map would also result in significant wasted staff time and public funds, because all the money and time spent on preparing to hold the 2018 primary under the Current Plan would have to be spent again.

75. Moreover, implementing a different map on the heels of the Current Plan could risk error and confusion among voters and election administrators.

Before the Current Plan was issued, the Department was on notice for several weeks that a redistricting was possible, and had time to plan and marshal its resources and educate the public and candidates about the changes. The Department has not, on the other hand, prepared for a second redistricting close on the heels of the first.

76. If use of the 2011 Plan is ordered, the Department may be able to implement that plan using stored data. However, the Department has never attempted to revert back to a prior redistricting plan using stored data, and therefore cannot ensure that it will be possible to do so, especially in such a short timeframe.

77. Alternatively, the Department will be required to take all the data management steps it performed to implement the Current Plan, including converting data files into precinct lists, updating the election systems database, verifying the updates, updating and verifying the SURE system, and communicating with County officials about the changes.

78. If a new map is ordered, the Department will also need to once again prepare and post petition packages and engage in an intensive public outreach effort.

79. The delays required by putting a new map in place would require the Commonwealth to postpone the 2018 primary elections. Bifurcating the

congressional primary and the primary for other offices would cost approximately $20 million more than holding a single primary. The bulk of this expense will be borne by the counties.

80. A bifurcated primary would also result in significant logistical challenges for county election administrators. These challenges are compounded by the fact that the currently scheduled primary is now only about two months away. Staff and polling places that are available on May 15 may not be available on the rescheduled date, and educating the public as to new dates will be difficult.

81. Because of these logistical challenges, I believe that rescheduling the primary would cause a great deal of confusion among district-level elections administrators, risking problems at the polls.

Jonathan M. Marks

Sworn to and subscribed before me
This 2nd day of March, 2018

Nickole L. Baker
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Nickole L. Baker, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires Aug. 30, 2018
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

League of Women Voters of Pennsylvania, *et al.*, *Petitioners,* v. The Commonwealth of Pennsylvania, *et al.*, *Respondents.*	**No. 261 MD 2017**

AFFIDAVIT OF JONATHAN MARKS

Jonathan Marks, being duly sworn, deposes and says:

1. I am Commissioner of the Bureau of Commissions, Elections and Legislation (the "Bureau"), a bureau of the Commonwealth's Department of State (the "Department").

2. I was appointed to the position of Commissioner in October 2011.

3. I have been with the Bureau since the Fall of 2002.

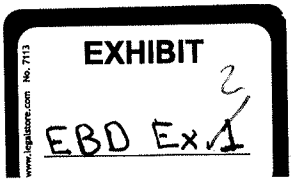
4. From 2008 to 2011, I served as the Chief of the Division of the Statewide Uniform Registry of Electors.

5. Prior to that, from 2004 to 2008, I served as the Chief of the Division of Elections.

6. I am responsible for overseeing the day to day operations of the Bureau, which include election administration.

7. I have supervised the administration of the Department's duties in more than 20 regularly scheduled elections and a number of special elections.

8. The next Congressional primary is scheduled for May 15, 2018.



9. The current timeline of deadlines leading up to the May 15 primary is set forth at paragraphs 130-152 of the Joint Stipulation of Facts filed on December 8, 2017.

10. All of the deadlines set forth in paragraphs 130-152 of the Joint Stipulation of Facts are required by federal or state law.

11. The earliest deadline on the current election calendar is February 13, 2018, the first day for circulating and filing nomination petitions. *See* Joint Stipulation of Facts ¶ 131.

12. In order to prepare for this February 13 deadline, it would be highly preferable to have all Congressional district boundaries finalized and in place by January 23, 2018, which would give the Department three weeks to prepare.

13. However, should there be a Court order directing that a new plan be put in place, and that plan is not ready until after January 23, it may still be possible for the 2018 primaries to proceed as scheduled using the new plan.

14. Through a combination of internal administrative adjustments and Court-ordered date changes, it would be possible to hold the primaries on the scheduled May 15 date even if a new plan is not put into place until on or before February 20, 2018.

15. First, the current elections schedule gives the Counties ten weeks between the last date for circulating and filing nomination petitions (currently March 6) and the primary election date to prepare for the primary election.

16. Based on my experience, the Counties could fully prepare for the primary election in six to eight weeks.

17. Therefore, I believe that the close of the nomination petitions period could be moved back two weeks to March 20, without compromising the elections process in any way.

18. Second, if the Court were to order a time period for circulating and filing nomination petitions that lasted two weeks, instead of three, the nominations period could start on March 6.

19. Third, as stated above, the Department would normally need three weeks of preparation time before the first date for filing and circulating nomination petitions.

20. However, with the addition of staff and increased staff hours, it would be possible for the Department to complete its preparations in two weeks instead of three.

21. Accordingly, if the first date for filing and circulating nomination petitions was moved to March 6, as described above, the Department would need to have a final plan in place by approximately February 20, 2018.

22. Should there be a Court order directing that a new plan be put in place, and that plan is not ready until after February 20, 2018, it would also be possible, if the Court so ordered, to postpone the 2018 primary elections from May 15 to a date in the summer of 2018.

23. There would be two options under this scenario: (1) the Court could postpone all of the primary elections currently scheduled for May 15; or (2) the Court could postpone the Congressional primary election alone. Either option would require a primary date no later than July 31, 2018.

24. Depending on the date of the postponed primary election, the date by which the new plan would be put in place could be as late as the beginning of April 2018.

25. Postponement of the primary in any manner would not be preferable, because it would result in significant logistical challenges for County election administrators. If postponement takes place, for administrative and cost savings reasons, the Department's preferred option would be postponement of the entire primary.

26. Postponing the Congressional primary alone would require the administration of two separate primary elections (one for Congressional seats and one for other positions), which would result in an additional expenditure of a significant amount of public funds.

27. The cost of holding a single primary in 2018 would be approximately $20 million. If two primaries are held, each will cost approximately $20 million.

28. For each primary, Pennsylvania's 67 Counties will be reimbursed a portion of the costs associated with mailing absentee ballots to certain military and overseas civilian voters and bedridden or hospitalized veterans. The other costs of the primary are paid by the Counties. This is similar to the way that costs are allocated in special Congressional elections.

29. Should the Court wish for more details regarding the costs of postponing a primary or the timeline leading up to any primary date that the Court selects, I stand ready to provide them.

30. The Department will make every effort to comply with any schedule that the Court puts in place.

Jonathan Marks

Sworn to and subscribed before me

This 14 day of December, 2017

Notary Public

Commonwealth of Pennsylvania
NOTARIAL SEAL
Danielle Renee Osman, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires June 26, 2018

EXHIBIT 2

IMPORTANT NOTICE
REVISED PETITION FILING CALENDAR
FOR CONGRESSIONAL CANDIDATES

In accordance with the Pennsylvania Supreme Court's order requiring a new congressional redistricting plan for the May 15, 2018 primary election, below are the petition filing adjustments to the election calendar **applicable ONLY to the office of Representative in Congress**:

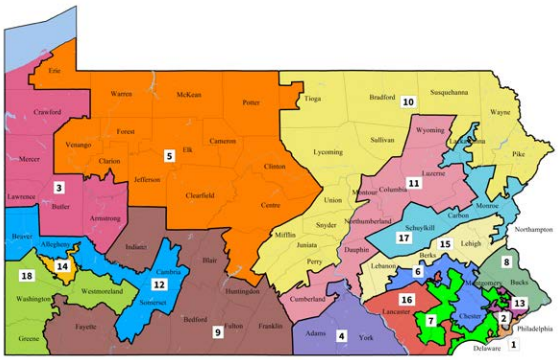
- February 27 First day to circulate and file nomination petitions.
- March 20 Last day to circulate and file nomination petitions.
- March 22 Ballot lottery.
- March 27 Last day for withdrawal by candidates who file nomination petitions.
- March 27 Last day to file objections to nomination petitions.

The election calendar will otherwise remain the same except for the adjusted petition filing period for the office of Representative in Congress. The 2018 Election Calendar may be found here.

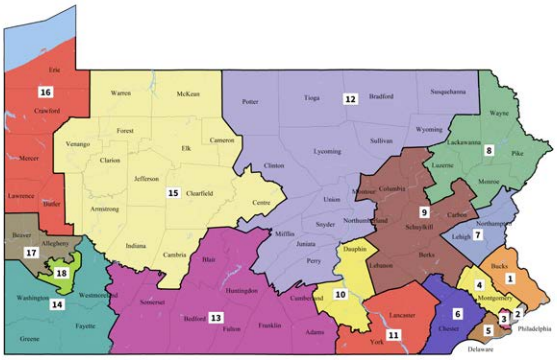
Candidates for Representative in Congress should check the Department's website frequently for any updated information. The Department will make nomination petition forms and instructions available for the office of Representative in Congress as soon as possible after a new Congressional Redistricting Plan is approved.

STATEWIDE DISTRICT IMAGES

2011 STATEWIDE MAP



2018 STATEWIDE REMEDIAL MAP



2018 REMEDIAL CONGRESSIONAL DISTRICTS

The chart below lists congressional districts by county under Pennsylvania's new remedial plan. Click on a district PDF by your county for a comparison of the remedial congressional map and the 2011 congressional redistricting map, along with a description of the district.

You can also find a copy of the 2018 Congressional Remedial Plan Textual Descriptions here.

For more information on the Pennsylvania Supreme Court's Remedial Plan, please click here.

Explore the Remedial Congressional Districts using our interactive map.

County Name	Remedial Congressional Districts
Adams	District 13
Allegheny	District 17 District 18
Armstrong	District 15
Beaver	District 17
Bedford	District 13
Berks	District 4 District 6 District 9
Blair	District 13
Bradford	District 12
Bucks	District 1
Butler	District 15 District 16 District 17
Cambria	District 13 District 15
Cameron	District 15
Carbon	District 9
Centre	District 12 District 15
Chester	District 5 District 6
Clarion	District 15
Clearfield	District 15
Clinton	District 12
Columbia	District 9
Crawford	District 16
Cumberland	District 10 District 13
Dauphin	District 10
Delaware	District 5
Elk	District 15
Erie	District 16
Fayette	District 14
Forest	District 15
Franklin	District 13
Fulton	District 13
Greene	District 14
Huntingdon	District 13
Indiana	District 15
Jefferson	District 15

Juniata	District 12
Lackawanna	District 8
Lancaster	District 11
Lawrence	District 16
Lebanon	District 9
Lehigh	District 7
Luzerne	District 8 District 9
Lycoming	District 12
McKean	District 15
Mercer	District 16
Mifflin	District 12
Monroe	District 7 District 8
Montgomery	District 1 District 4 District 5
Montour	District 9
Northampton	District 7
Northumberland	District 9 District 12
Perry	District 12
Philadelphia	District 2 District 3 District 5
Pike	District 8
Potter	District 12
Schuylkill	District 9
Snyder	District 12
Somerset	District 13
Sullivan	District 12
Susquehanna	District 12
Tioga	District 12
Union	District 12
Venango	District 15
Warren	District 15
Washington	District 14
Wayne	District 8
Westmoreland	District 13 District 14
Wyoming	District 12
York	District 10 District 11

If you have any questions, please call the Bureau of Commissions, Elections and Legislation toll-free at 1-

877-868-3772.

EXHIBIT 3

IMPORTANT NOTICE REGARDING NOMINATION PETITION FILING

Nomination petition forms are available online for all candidates including Representative in Congress. You may click here to create your personalized petition packet.

Please be advised, important updates and 2018 Remedial Congressional Districts have been provided here.

The dates and deadlines for nomination petition filing published in the 2018 Election Calendar apply **ONLY** to candidates for the following offices:

- United States Senator

- Governor
- Lieutenant Governor
- Senator in the General Assembly
- Representative in the General Assembly
- Democratic State Committee Member
- Republican State Committee Member

Filing deadlines and information for the office of Representive in Congress may be found here.

If you have any questions, please call the Bureau of Commissions, Elections and Legislation toll-free at 1-877-868-3772.

HOW TO CREATE A PETITION PACKET

Candidates can easily create nomination petitions forms online using our Candidate Survey webpage.

The online nomination petition forms streamline the login and petition review process to reduce the amount of time candidates spend waiting in line.

Candidates should save an electronic copy of their personalized nomination petition forms in the event they need to distribute additional forms to volunteers.

Because the petition forms are optimized for use with our electronic filing system, it is important that candidates carefully follow the instructions for printing and copying petition pages.

If you have questions about the Candidate Petition Form webpage, please contact the Department of State toll-free at 1-877-868-3772.

“Things You Will Need” Checklist

-You must file with your nomination petition a completed and notarized Candidate’s Affidavit

-You must file nomination petition page(s) with the required number of signatures for the office you are seeking

-You must file a copy of your Statement of Financial Interests, if applicable (not required for Federal or Political Party offices)

-You must file the original copy of your Statement of Financial Interests with the State Ethics Commission on or before the nomination petition filing deadline

-You must submit with your nomination petition a certified check or money order in the appropriate amount payable to the ‘Commonwealth of Pennsylvania’ (personal checks and cash cannot be

accepted)

-You must submit with your nomination petition a certified check or money order in the appropriate amount payable to the 'Commonwealth of Pennsylvania' (personal checks and cash cannot be accepted)

PLEASE NOTE:

Petitions must be printed 2-sided on 8 ½ x 11" paper, head to head

Petition pages that are not printed 2-sided will not be accepted

Each petition page must be notarized after signatures are gathered

Signatures can be gathered only during the nomination petition circulation and filing period

Signatures that are dated before the first day to circulate or after the last day to circulate will not be counted

Remember to click the link on the petition form webpage to obtain the Statement of Financial Interests form

Statewide and State Level Offices Eligible for Election in 2018

U.S. Senate

Governor

Lt. Governor

*Representative in Congress

Senator in the General Assembly

Representative in the General Assembly

Democratic State Committee

Republican State Committee

* Nomination petition forms, instructions, circulation dates and deadlines for the office of Representative in Congress will be posted after a new Congressional Reapportionment Plan is approved.

USEFUL LINKS

Create a personalized nomination petition form packet

View a copy of the nomination petition instructions

Frequently Asked Questions

"Things You Will Need" Checklist

Candidate Q & A

If you have any questions, please email ra-elections@pa.gov or call 717-787-5280.

LINKS

Congressional Petition Notice

2018 Remedial Congressional Districts

Create Nomination Petition Packet

Candidate Database

Election Administration Tools

Election Calendar

Request Voter Lists

Special Elections

2018 Important Dates

How to Run for Office

pennsylvania
DEPARTMENT OF STATE

CONTACT US

ABOUT DOS

PRESS ROOM

SOCIAL MEDIA

TOP SERVICES

GOVERNMENT

PA.GOV

ACCESSIBILITY

PRIVACY & DISCLAIMERS

TRANSLATION DISCLAIMER

SECURITY

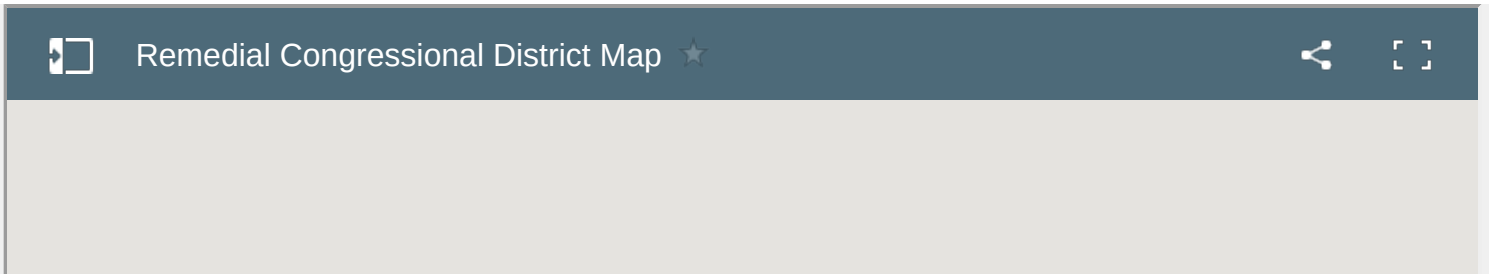
EXHIBIT 4

Notice: This interactive google map is a representation of the Remedial Plan issued by the Pennsylvania Supreme Court on February 19, 2018. **It is made available for informational purposes only**. In the event of any conflict between the districts shown in this interactive map and the districts as described in the court's order, the official version appearing in the court order will prevail.

USEFUL LINKS:

- 2018 Congressional Remedial District Verbal Descriptions
- The Pennsylvania Supreme Court's Remedial Plan
- Statewide District Images

INTERACTIVE MAP FOR INFORMATIONAL PURPOSES ONLY.



pennsylvania
DEPARTMENT OF STATE

CONTACT US

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SOCIAL MEDIA

TOP SERVICES

GOVERNMENT

PA.GOV

EXHIBIT 5

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

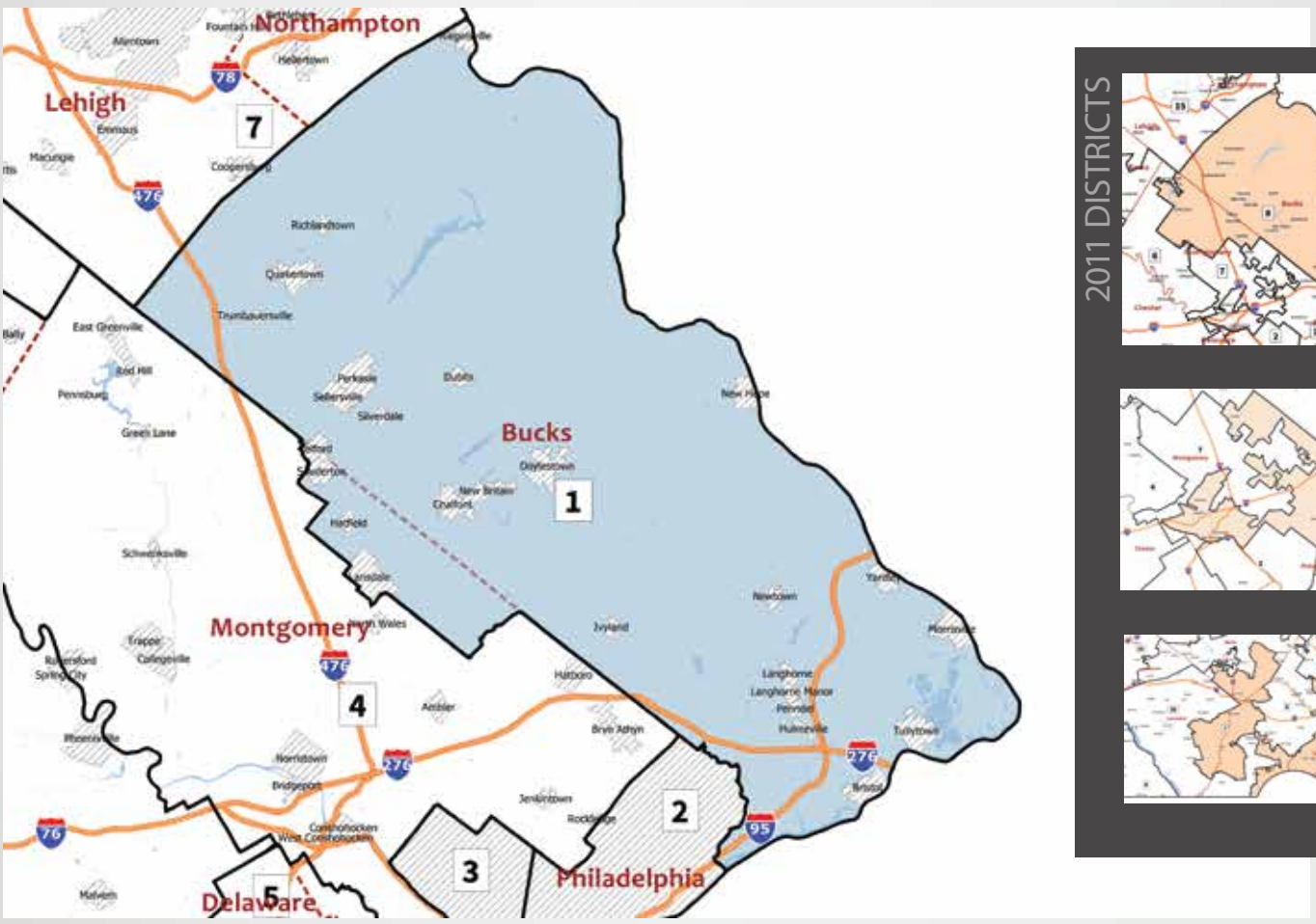
HOW THE

2011 MAP

DIFFERS FROM THE

2018 MAP

NEW DISTRICT 1



2011 DISTRICTS

IN THE NEW DISTRICT 1:

BUCKS COUNTY,

AND PART OF MONTGOMERY COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

HOW THE

2011 MAP

DIFFERS FROM THE

2018 MAP

NEW DISTRICT 2

IN THE NEW DISTRICT 2:

PART OF PHILADELPHIA

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

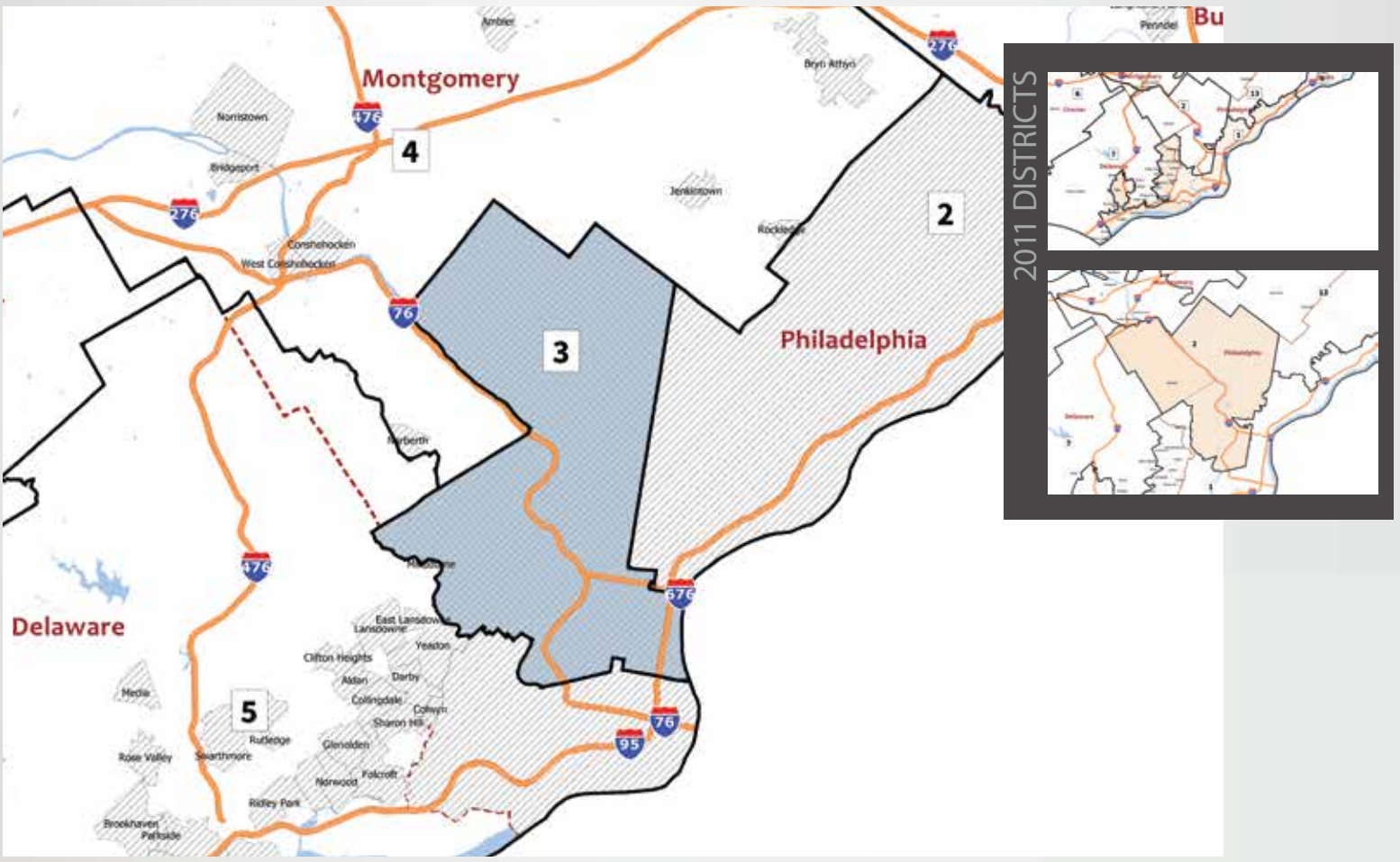
HOW THE

2011 MAP

DIFFERS FROM THE

2018 MAP

NEW DISTRICT 3



IN THE NEW DISTRICT 3:

PART OF PHILADELPHIA

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

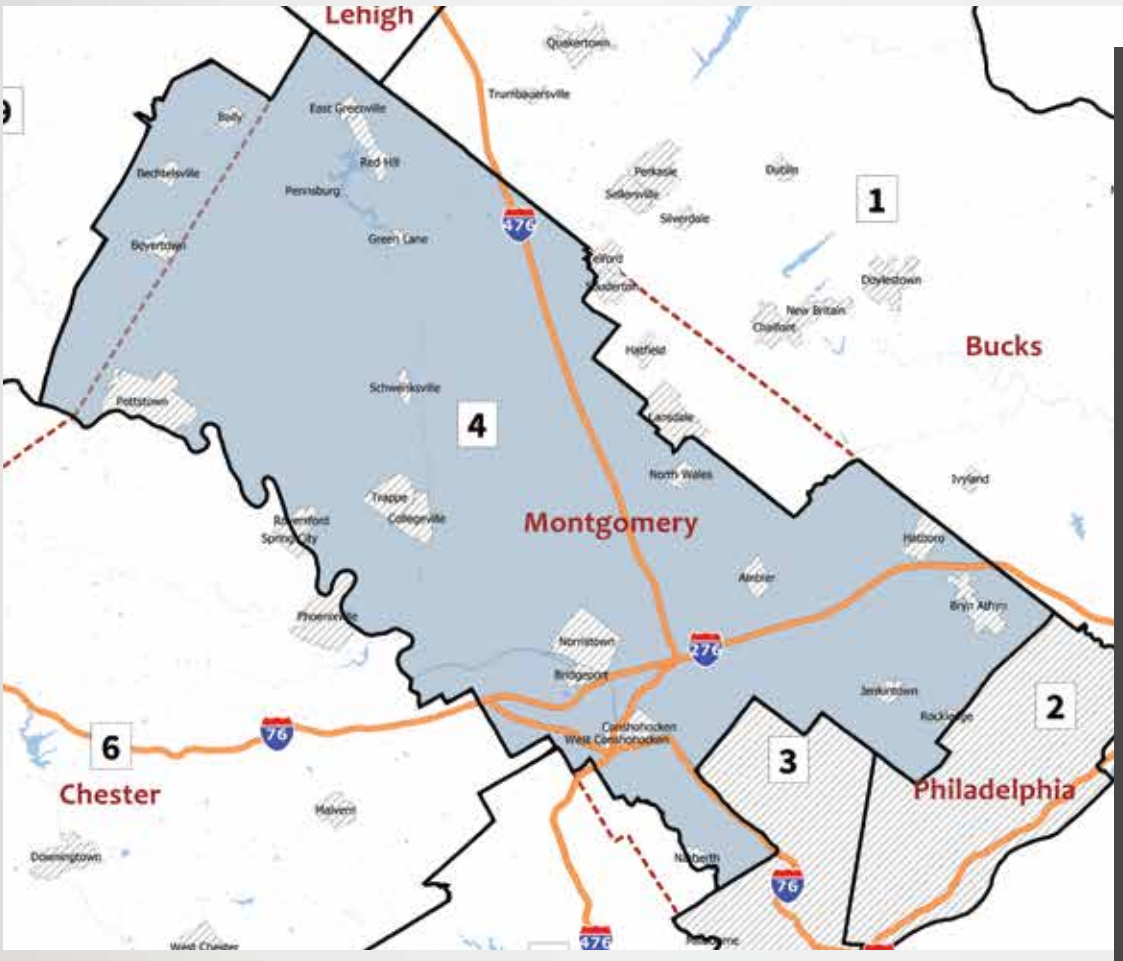
HOW THE

2011 MAP

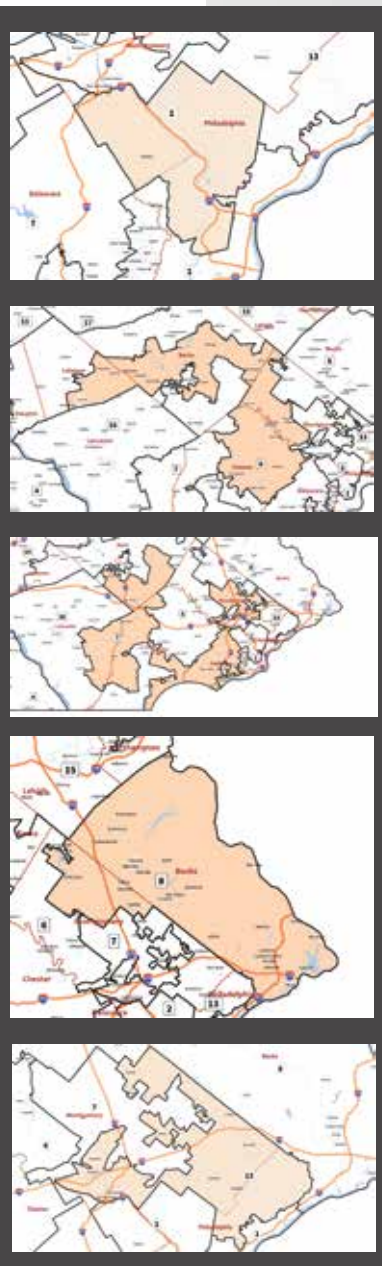
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 4



2011 DISTRICTS



IN THE NEW DISTRICT 4:

MOST OF MONTGOMERY COUNTY,

AND PART OF BERKS

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

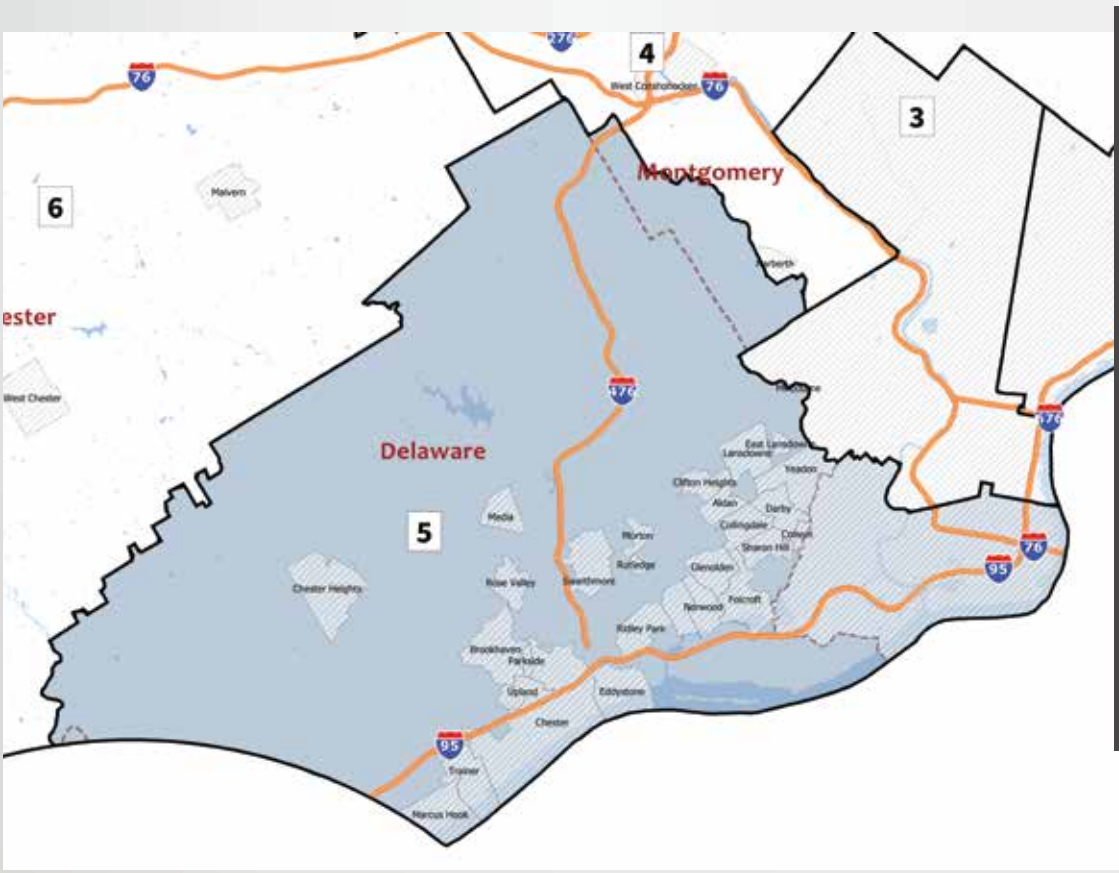
HOW THE

2011 MAP

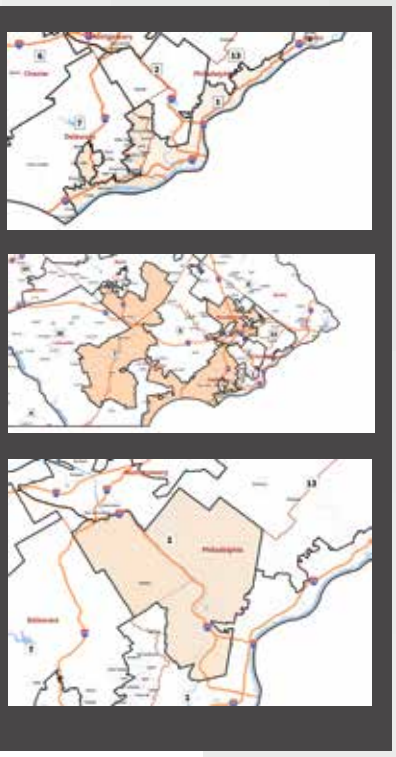
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 5



2011 DISTRICTS



IN THE NEW DISTRICT 5:

DELAWARE COUNTY,
PART OF CHESTER COUNTY,
PART OF MONTGOMERY COUNTY,
PART OF PHILADELPHIA

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

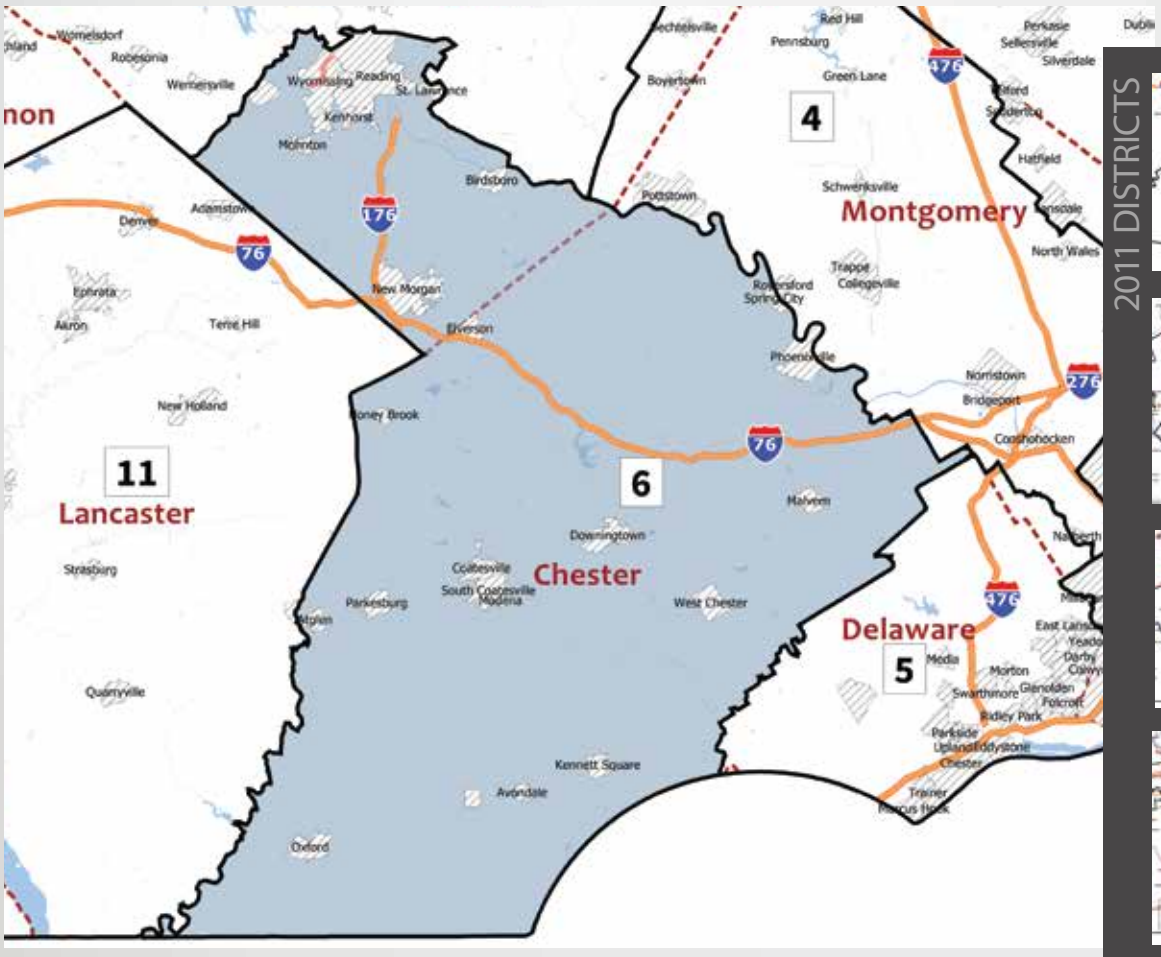
HOW THE

2011 MAP

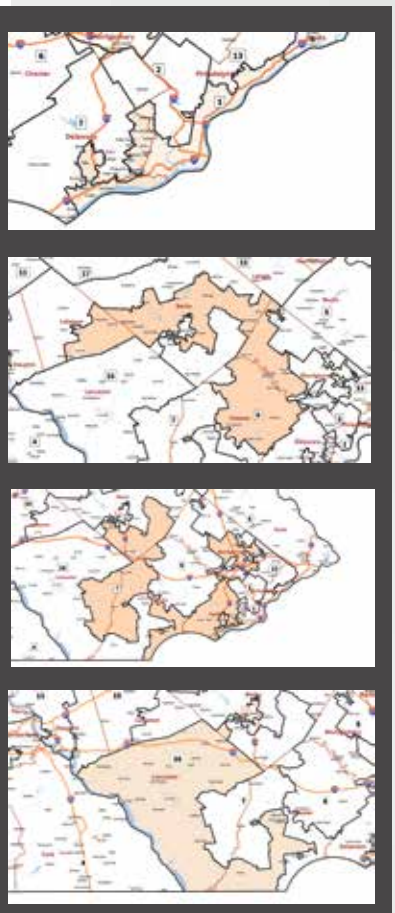
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 6



2011 DISTRICTS



IN THE NEW DISTRICT 6:

PART OF BERKS COUNTY,
AND PART OF CHESTER COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

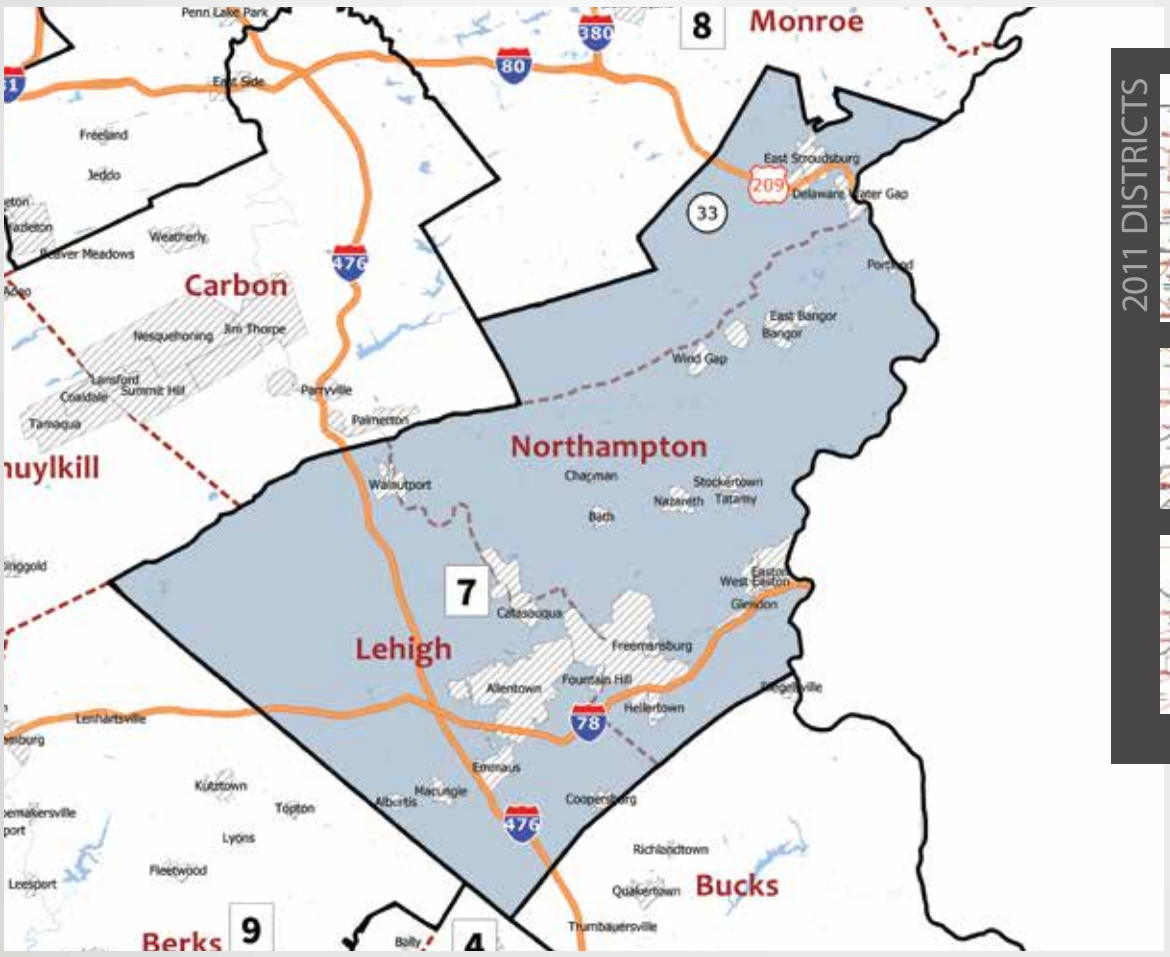
HOW THE

2011 MAP

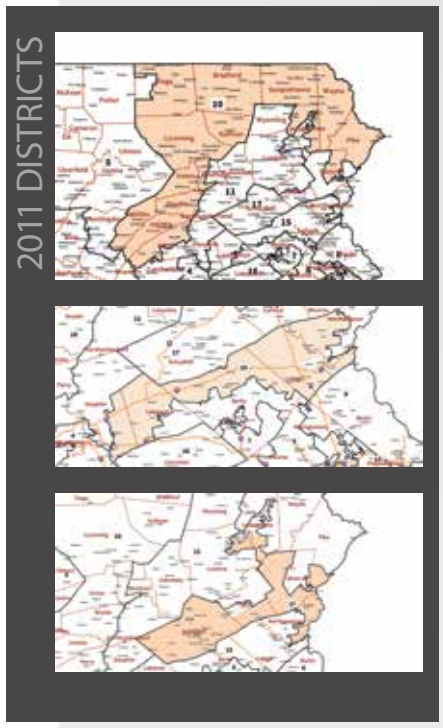
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 7



2011 DISTRICTS



IN THE NEW DISTRICT 7:

LEHIGH COUNTY,
NORTHAMPTON COUNTY,
AND PART OF MONROE COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

HOW THE

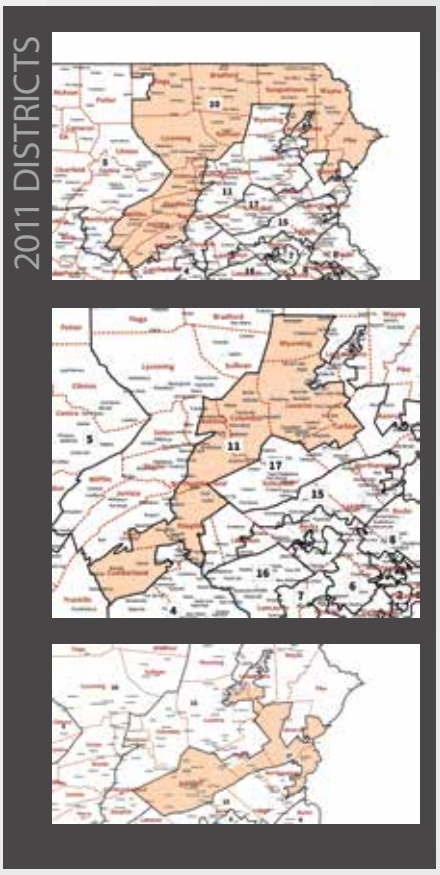
2011 MAP

DIFFERS FROM THE

2018 MAP

NEW DISTRICT 8

2011 DISTRICTS



IN THE NEW DISTRICT 8:

LACKAWANNA COUNTY, PIKE COUNTY, WAYNE COUNTY, PART OF LUZERNE COUNTY, AND PART OF MONROE COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

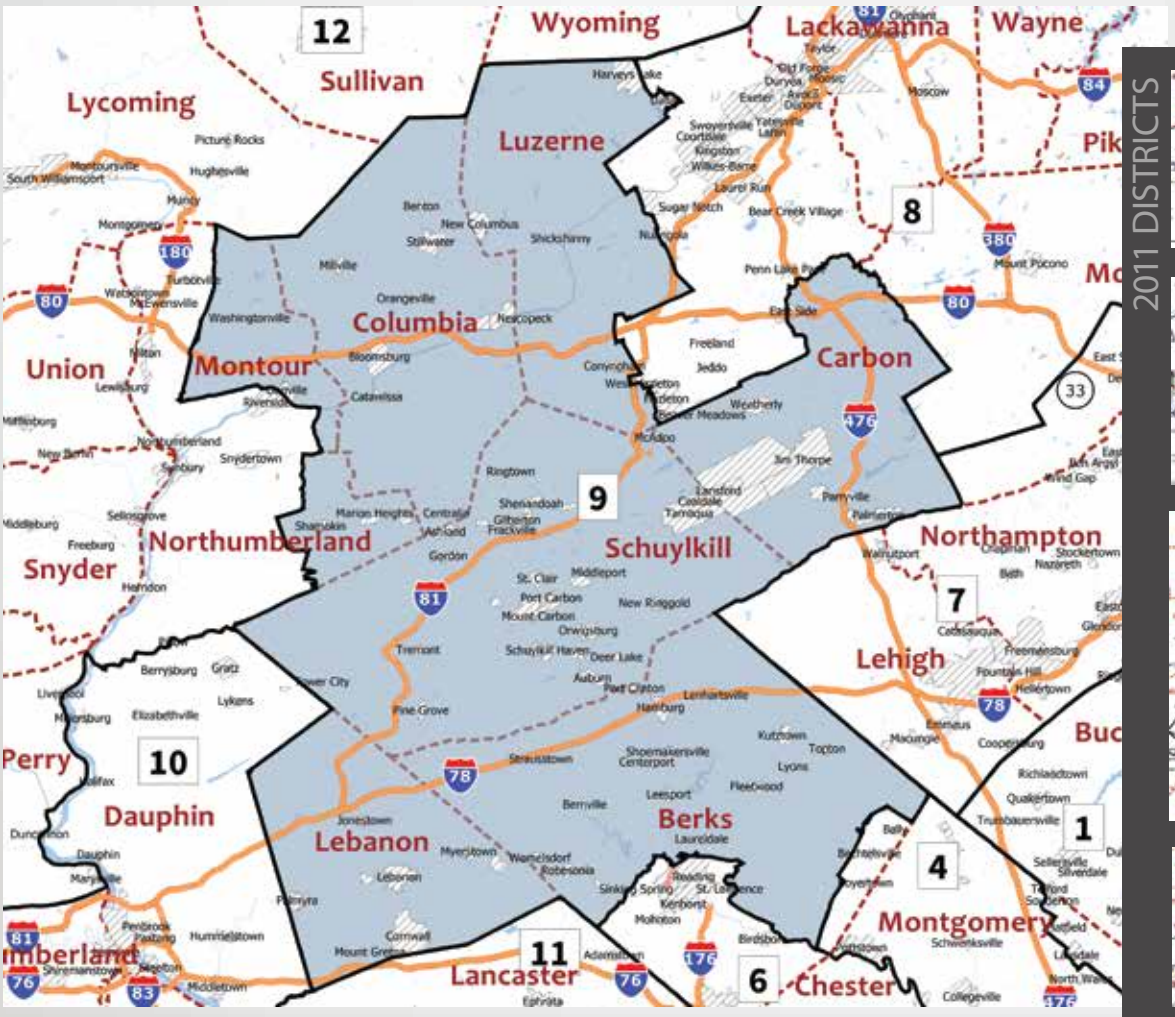
HOW THE

2011 MAP

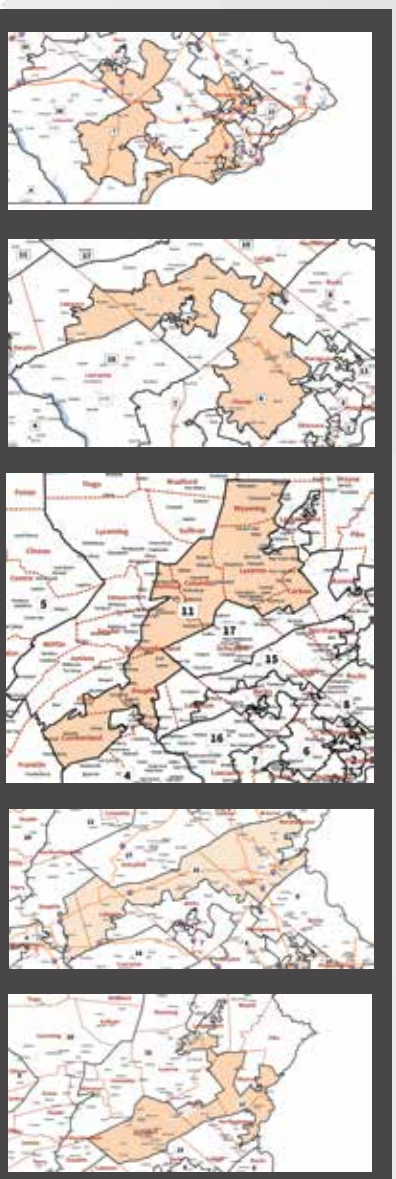
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 9



2011 DISTRICTS



IN THE NEW DISTRICT 9:

CARBON COUNTY, COLUMBIA COUNTY, LEBANON COUNTY, MONTOUR COUNTY, SCHUYLKILL COUNTY, PART OF BERKS COUNTY, PART OF LUZERNE COUNTY, AND PART OF NORTHUMBERLAND COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

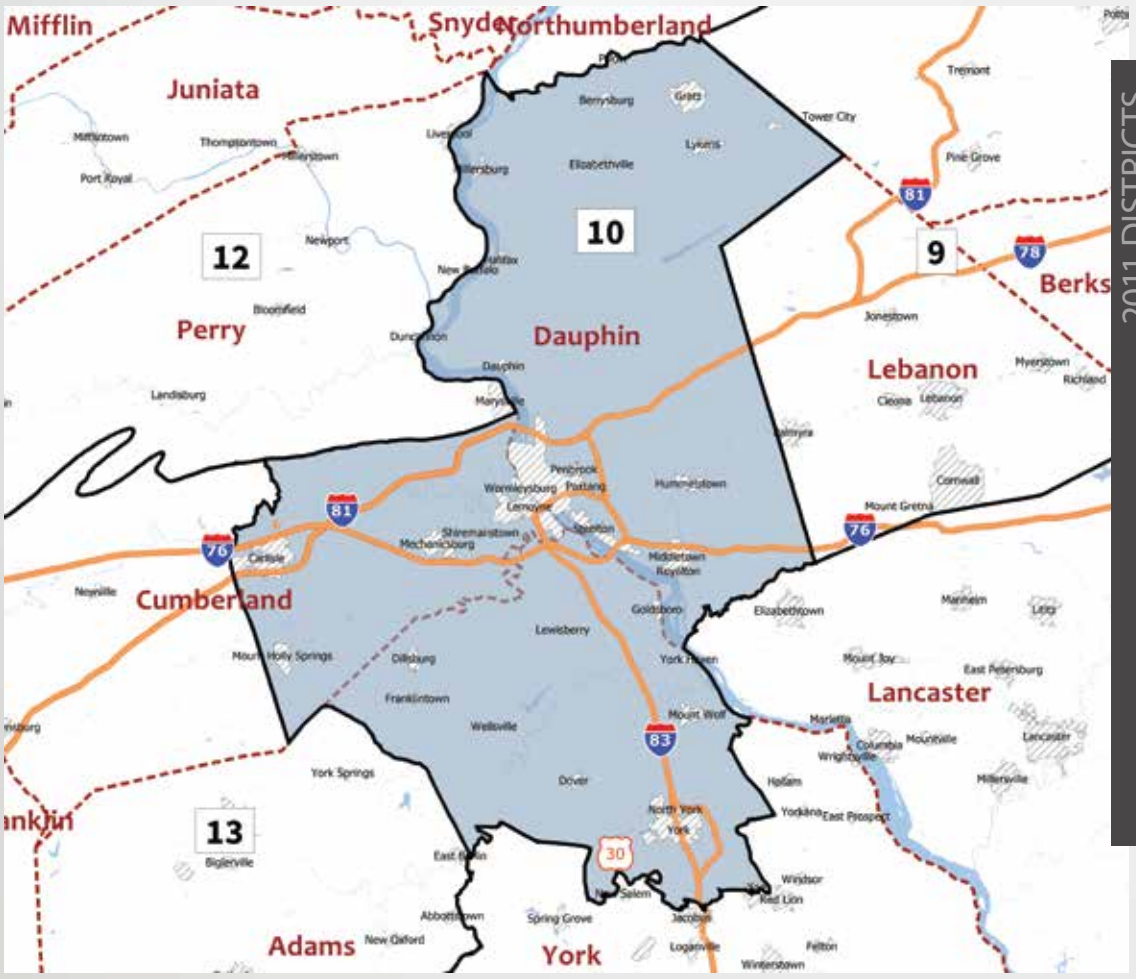
HOW THE

2011 MAP

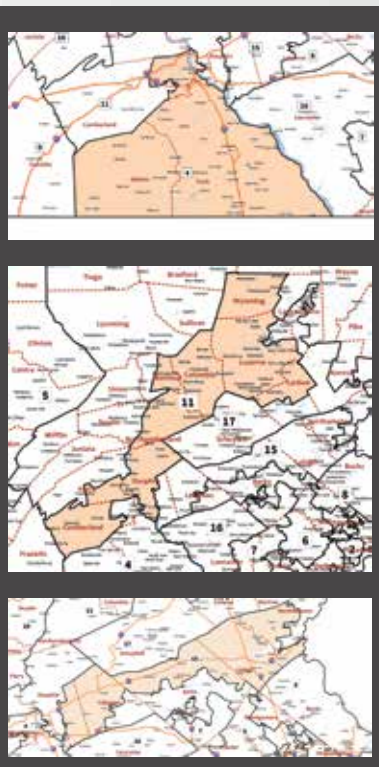
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 10



2011 DISTRICTS



IN THE NEW DISTRICT 10:

DAUPHIN COUNTY, PART OF CUMBERLAND COUNTY, AND PART OF YORK COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

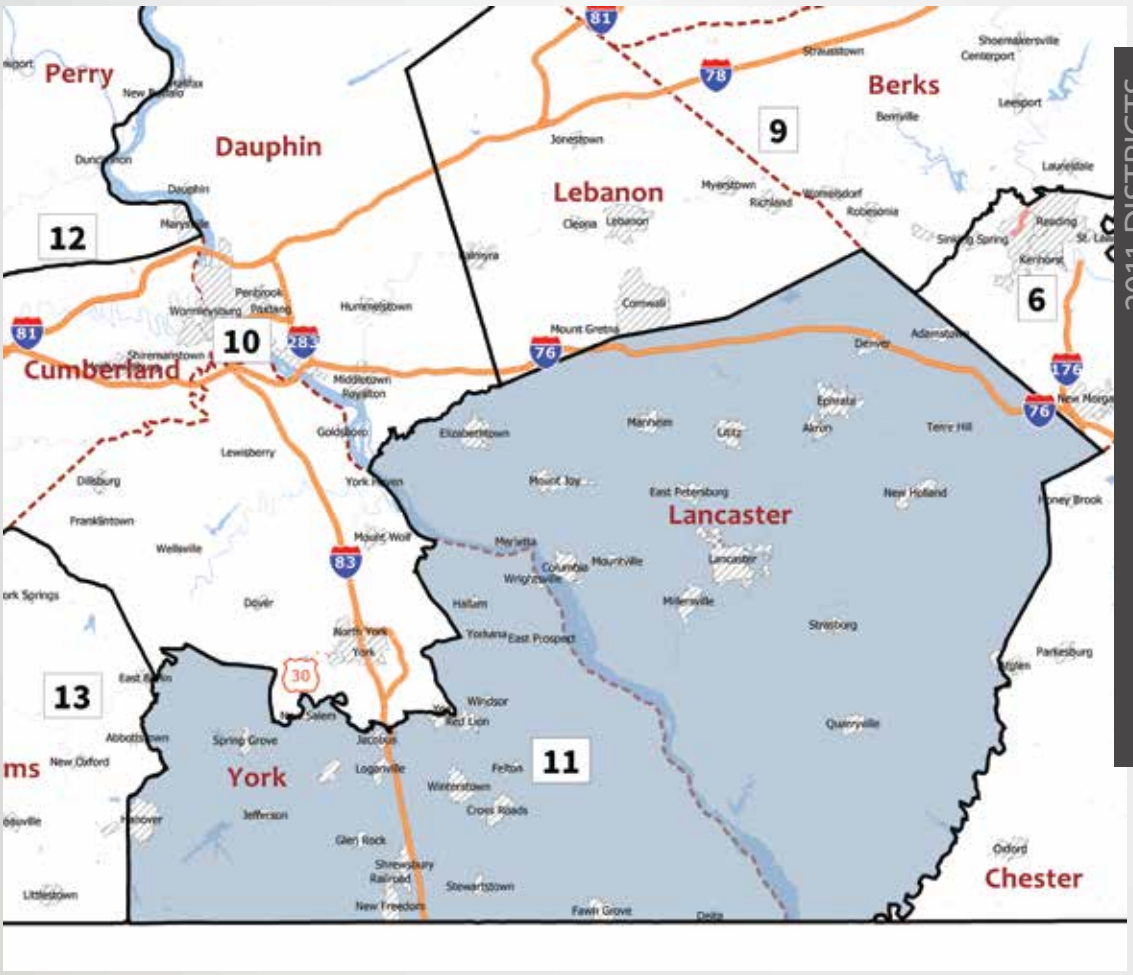
HOW THE

2011 MAP

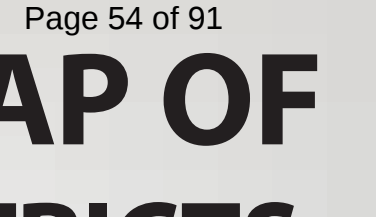
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 11



2011 DISTRICTS



IN THE NEW DISTRICT 11:

LANCASTER COUNTY,
AND PART OF YORK COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

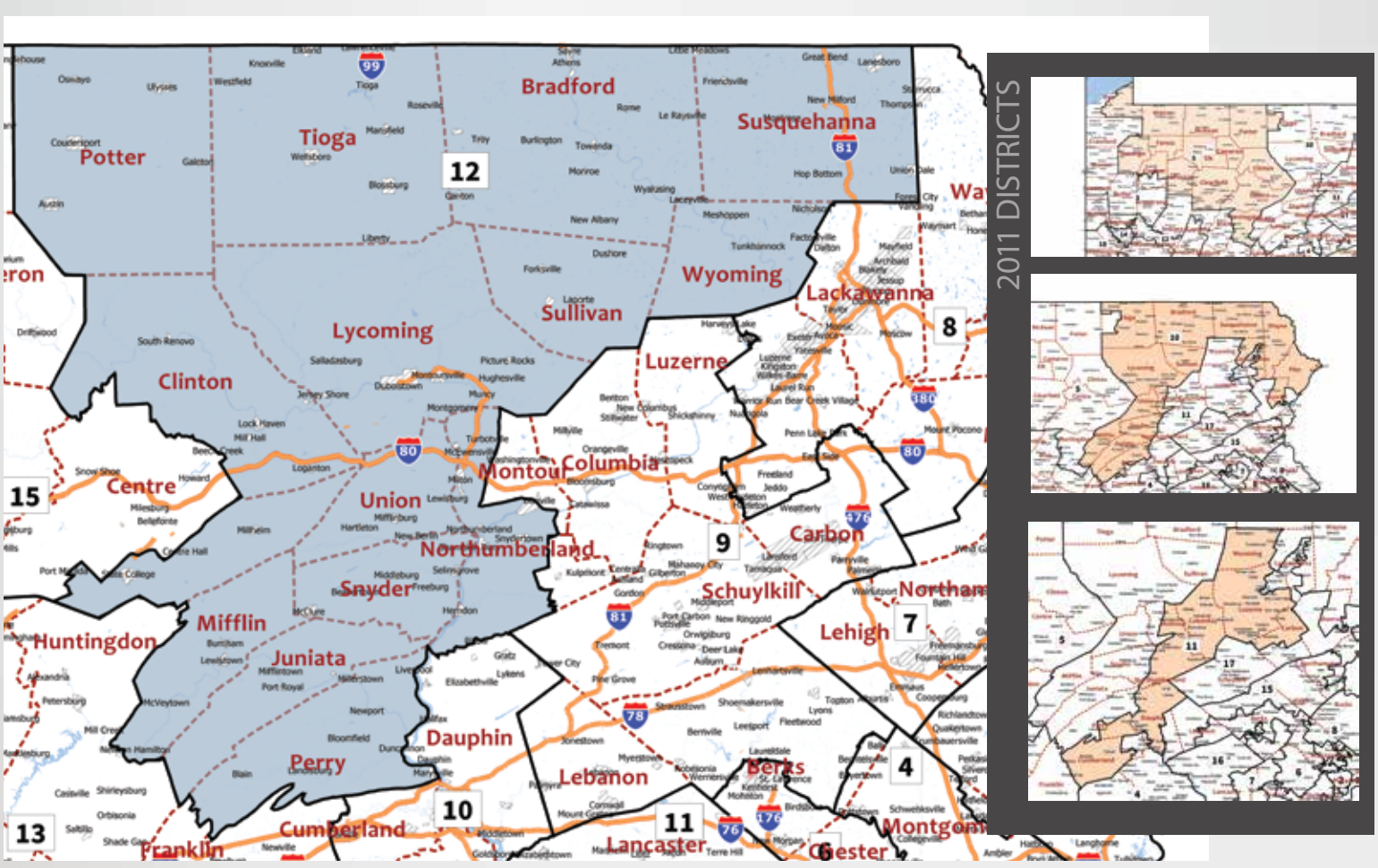
HOW THE

2011 MAP

DIFFERS FROM THE

2018 MAP

NEW DISTRICT 12



IN THE NEW DISTRICT 12:

BRADFORD COUNTY, CLINTON COUNTY, JUNIATA COUNTY, LYCOMING COUNTY, MIFFLIN COUNTY, PERRY COUNTY, POTTER COUNTY, SNYDER COUNTY, SULLIVAN COUNTY, SUSQUEHANNA COUNTY, TIOGA COUNTY, UNION COUNTY, WYOMING COUNTY, PART OF CENTRE COUNTY, AND PART OF NORTHUMBERLAND COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

HOW THE

2011 MAP

DIFFERS FROM THE

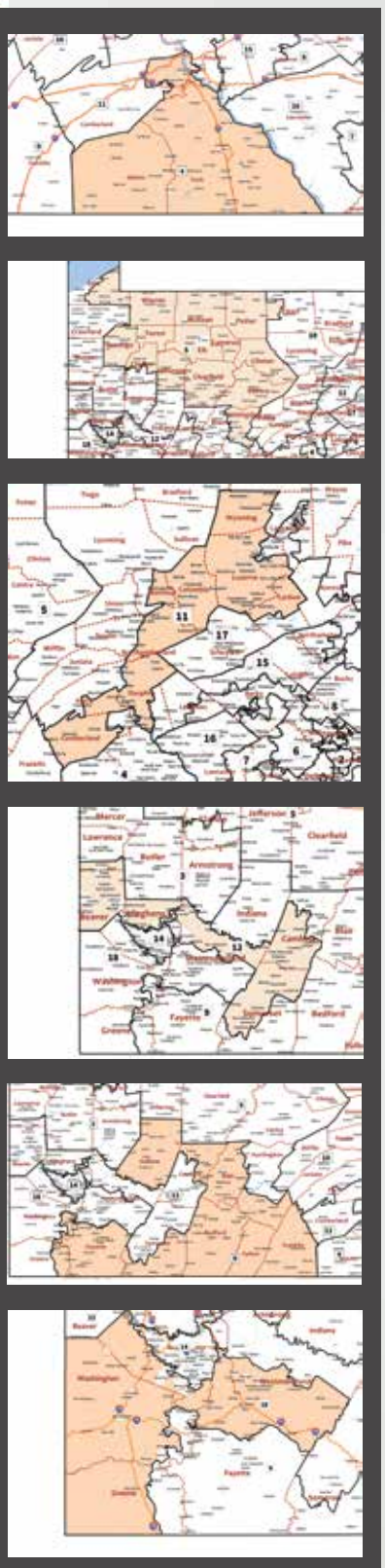
2018 MAP

NEW DISTRICT 13

IN THE NEW DISTRICT 13:

ADAMS COUNTY, BEDFORD COUNTY, BLAIR COUNTY, FRANKLIN COUNTY, FULTON COUNTY, HUNTINGDON COUNTY, SOMERSET COUNTY, PART OF CAMBRIA COUNTY, PART OF CUMBERLAND COUNTY, AND PART OF WESTMORELAND COUNTY

2011 DISTRICTS



2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

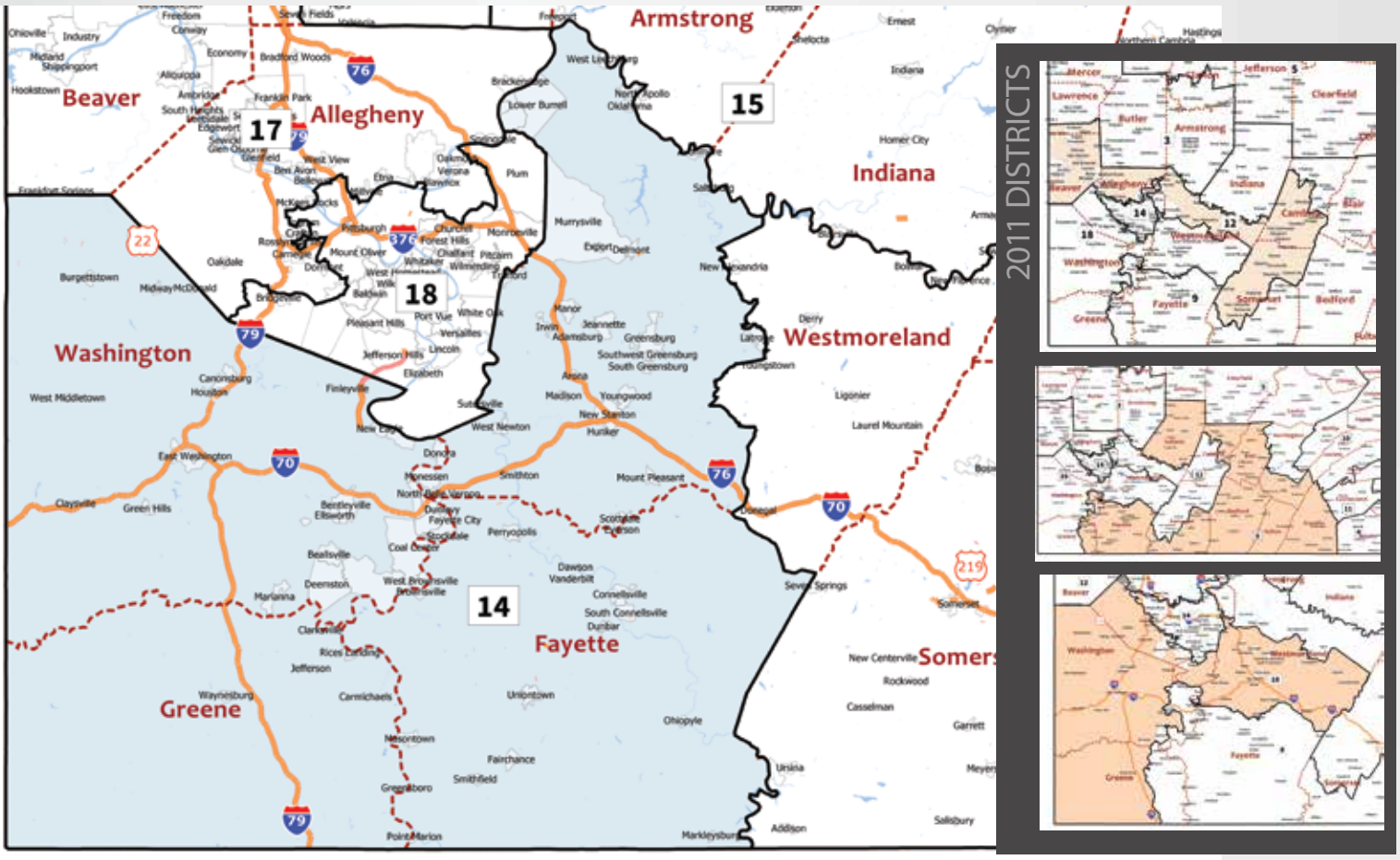
HOW THE

2011 MAP

DIFFERS FROM THE

2018 MAP

NEW DISTRICT 14



IN THE NEW DISTRICT 14:

WASHINGTON COUNTY,
FAYETTE COUNTY,
GREENE COUNTY,
AND PART OF
WESTMORELAND COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

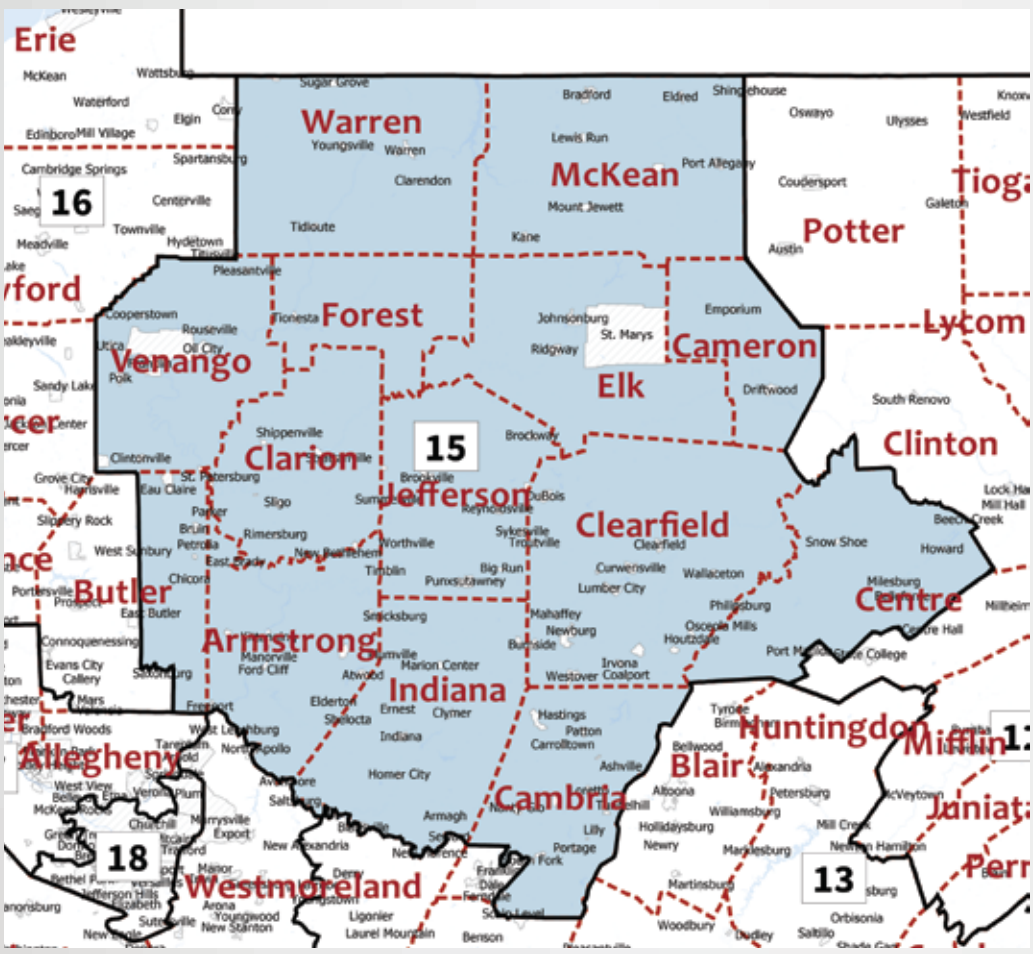
HOW THE

2011 MAP

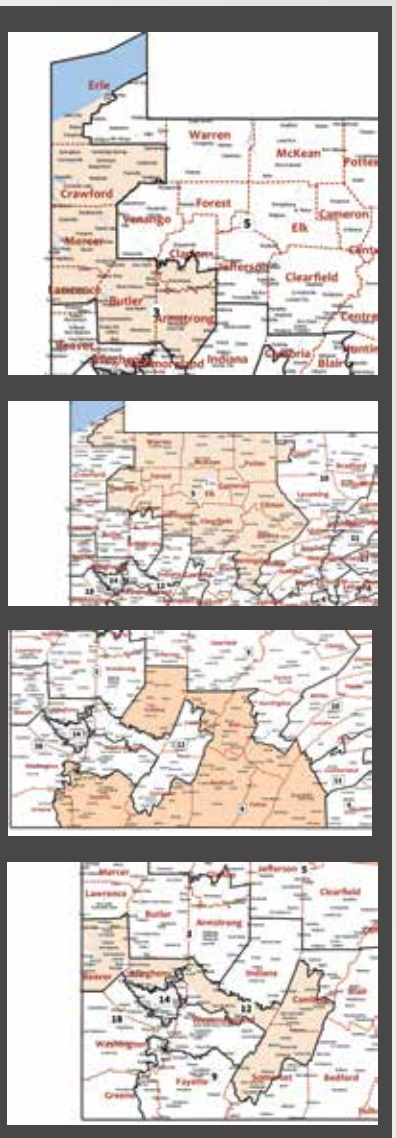
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 15



2011 DISTRICTS



IN THE NEW DISTRICT 15:

ARMSTRONG COUNTY, CAMERON COUNTY, CLARION COUNTY, CLEARFIELD COUNTY, ELK COUNTY, FOREST COUNTY, INDIANA COUNTY, JEFFERSON COUNTY, MCKEAN COUNTY, VENANGO COUNTY, WARREN COUNTY, PART OF BUTLER COUNTY, PART OF CAMBRIA COUNTY, AND PART OF CENTRE COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

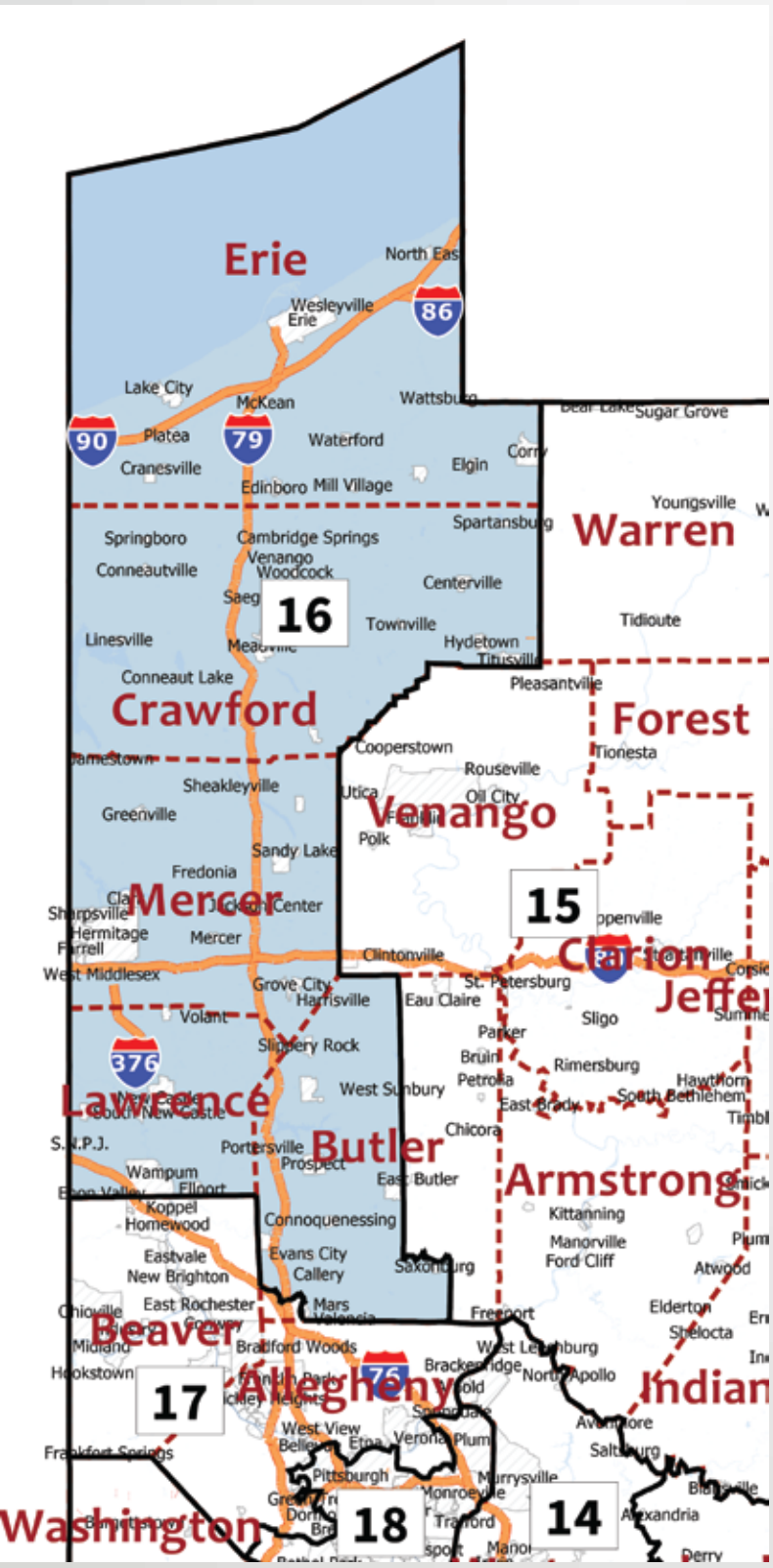
HOW THE

2011 MAP

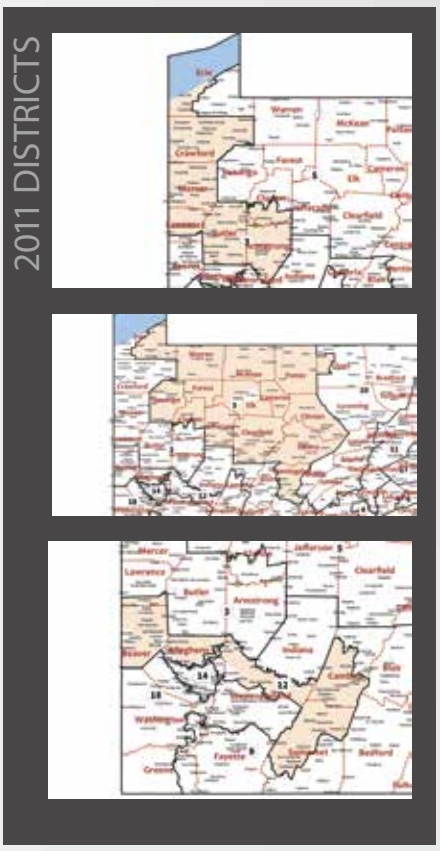
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 16



2011 DISTRICTS



IN THE NEW DISTRICT 16:

CRAWFORD COUNTY, ERIE COUNTY, LAWRENCE COUNTY, MERCER COUNTY, AND PART OF BUTLER COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

HOW THE

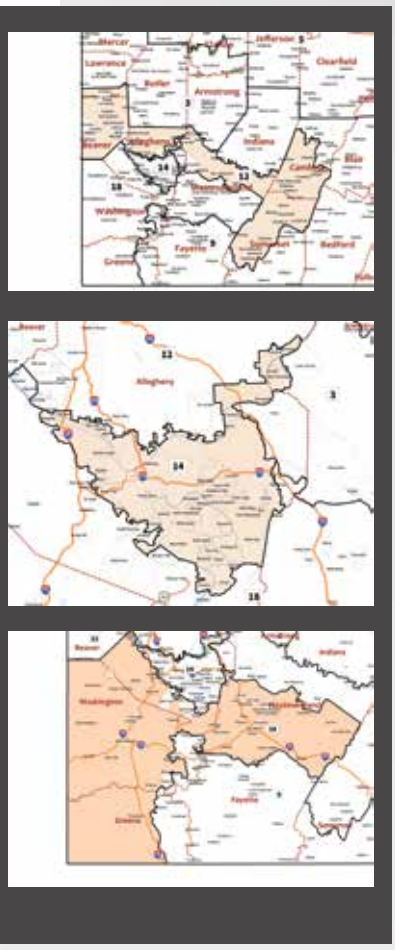
2011 MAP

DIFFERS FROM THE

2018 MAP

NEW DISTRICT 17

2011 DISTRICTS



IN THE NEW DISTRICT 17:

BEAVER COUNTY, PART OF ALLEGHENY COUNTY, AND PART OF BUTLER COUNTY

2018 REMEDIAL MAP OF CONGRESSIONAL DISTRICTS

RELEASED BY THE PENNSYLVANIA SUPREME COURT

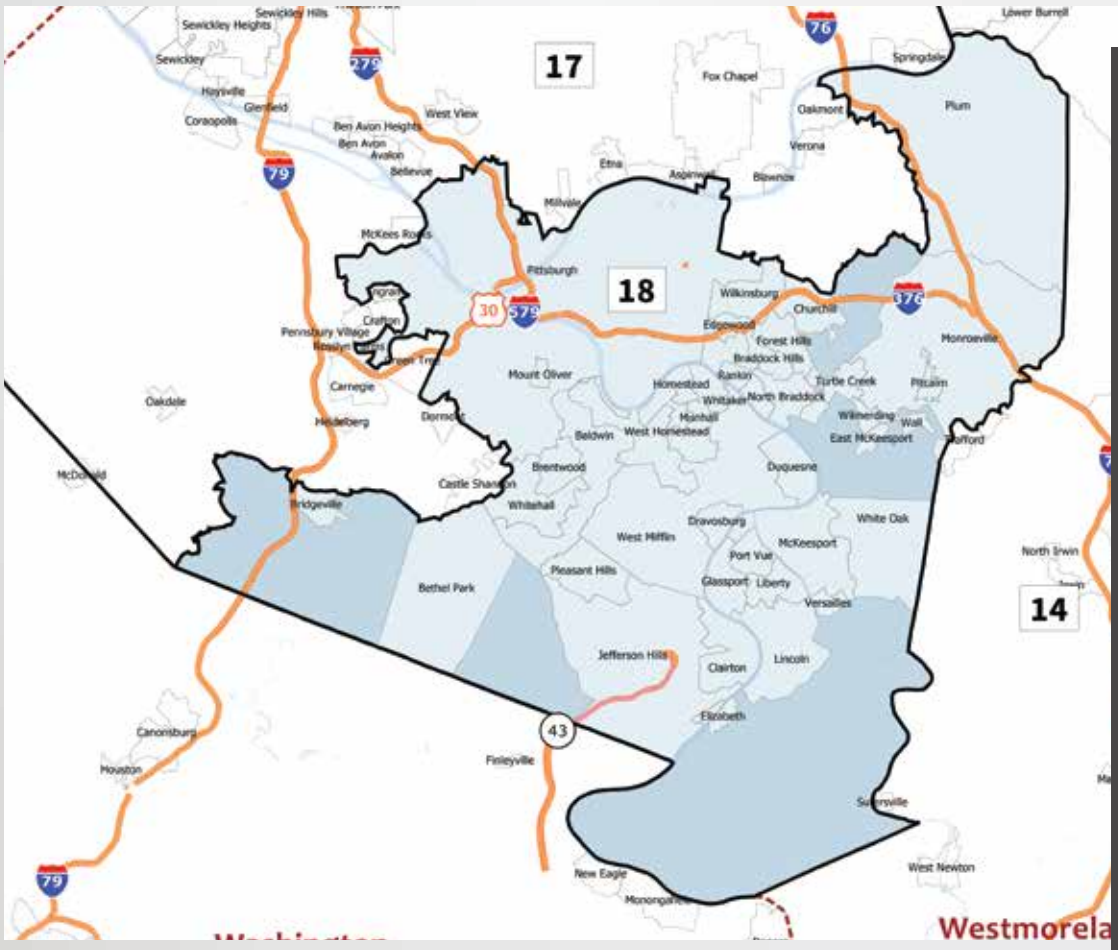
HOW THE

2011 MAP

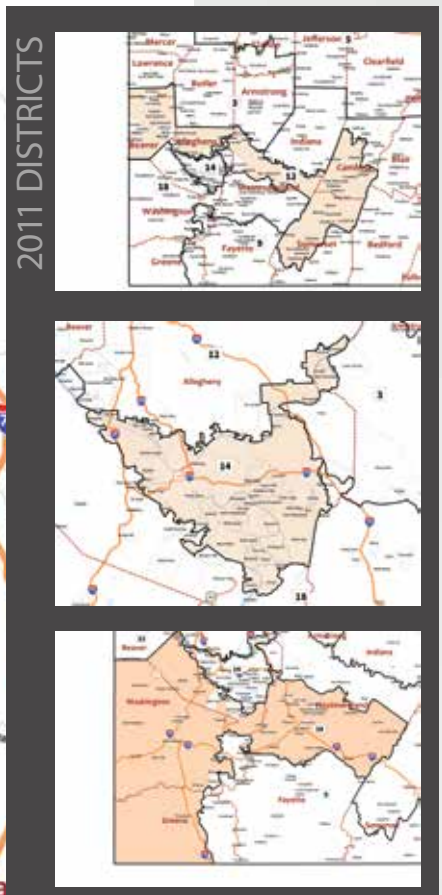
DIFFERS FROM THE

2018 MAP

NEW DISTRICT 18



2011 DISTRICTS



IN THE NEW DISTRICT 18:

PART OF ALLEGHENY COUNTY

EXHIBIT 6

PA.GOV

PENNSYLVANIA PRESSROOM
OFFICIAL NEWS FOR
PENNSYLVANIA STATE AGENCIES

02/20/2018

Department of State Implementing PA Supreme Court's Remedial Congressional Map

Harrisburg, PA – Acting Secretary of State Robert Torres today said the Department of State is taking necessary steps to implement the remedial congressional map released Monday by the Pennsylvania Supreme Court.

"The Department of State is well prepared for a new congressional map," said Governor Tom Wolf. "The department responded immediately to the Court's decision and is implementing its response plan. Over the next few days, updated information and support will be provided to local elections officials and candidates to ensure a smooth and orderly process."

The department is making the operational changes in plenty of time for the May 15 primary election.

"Voters will not see any changes in individual polling places and these changes do not in any way affect voters' polling places," said Torres. "Nor will there be any change in the rules in effect at polling places."

As soon as possible, the department plans to post spreadsheets on its website that will allow individual voters to check the congressional district in which they reside under the new boundaries.

With the map and data files made available by the Supreme Court on Monday, the Bureau of Commissions,

Elections and Legislation immediately began converting the data files into lists of precincts. This morning, staff began updating the elections system database with the new precincts lists.

Nomination petition packets will be available for congressional candidates no later than Thursday, and possibly as early as Wednesday. When nomination petitions are available, the Department will issue a press release and post an updated special notice to candidates on the Department's website.

Congressional candidates will follow a revised petition circulating and filing schedule approved by the court. The revised petition filing schedule, which applies ONLY to congressional candidates, allows for circulating and filing petitions from February 27 through March 20.

The Bureau is working simultaneously to update the voter registration database, the Statewide Uniform Registry of Electors (SURE), so candidates can obtain updated voter lists from the Department or from appropriate counties. That work is also expected to be complete by the end of this week.

"In the meantime, there are 54 counties that lie entirely within a single district," said Jonathan Marks, Commissioner of the Bureau of Commissions, Elections and Legislation. "So candidates for most congressional districts will be able to identify significant numbers of voters even before the updated lists are ready."

Where counties are split by the new map, the work of updating voter registration files in the SURE system is done by the County Boards of Elections. The Bureau is communicating with the affected counties to ensure that they have the information necessary to enter accurate updates.

The Bureau has also developed a plan for temporarily administering two sets of precincts for the 18th Congressional District to ensure that the four counties involved in the March special election for that district are not adversely impacted. The March 13 special election will be conducted using the former congressional boundaries.

NOTE: Video and audio of an interview with Jonathan Marks, Commissioner of the Bureau of Commissions, Elections and Legislation, will be available for download later today in an email from the Pennsylvania Internet News Service (PINS). To register for PINS emails, cms@pacast.com.

MEDIA CONTACT: Wanda Murren, 717-783-1621

###

SHARE THIS

EXHIBIT 7

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02/21/2018

Petition Packets for Congressional Candidates to be Available Thursday

Harrisburg, PA – The Department of State will have nomination petition packets available for congressional candidates on Thursday, February 22, Acting Secretary of State Robert Torres announced today.

Congressional candidates will follow a revised petition circulating and filing schedule approved by the Pennsylvania Supreme Court. The revised petition filing schedule, which applies ONLY to congressional candidates, allows for circulating and filing petitions from February 27 through March 20.

Candidates and voters can find a county-level comparison of the remedial congressional map and the 2011 congressional redistricting map on the department's website.

"Voters will not see any changes in their polling places because of the court's order and new map. Nor will there be any change in the rules in effect at polling places," Torres said.

The department's Bureau of Commissions, Elections and Legislation (BCEL) is making the necessary changes to the voter registration database, the Statewide Uniform Registry of Electors (SURE), so candidates can obtain updated voter lists from the department or from appropriate counties. That work is expected to be complete by the end of this week.

As soon as possible, the bureau will produce a detailed breakdown of congressional boundaries for voters.

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The Bureau has developed a plan for temporarily administering two sets of precincts for the former 18 Congressional District to ensure that the four counties involved in the upcoming special election for that district are not adversely impacted. The March 13 special election will be conducted using the former congressional boundaries.

NOTE: Video and audio of an interview Tuesday with Jonathan Marks, Commissioner of BCEL, and an earlier press release from the department can be downloaded here.

MEDIA CONTACT: Wanda Murren, 717-783-1621

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EXHIBIT 8

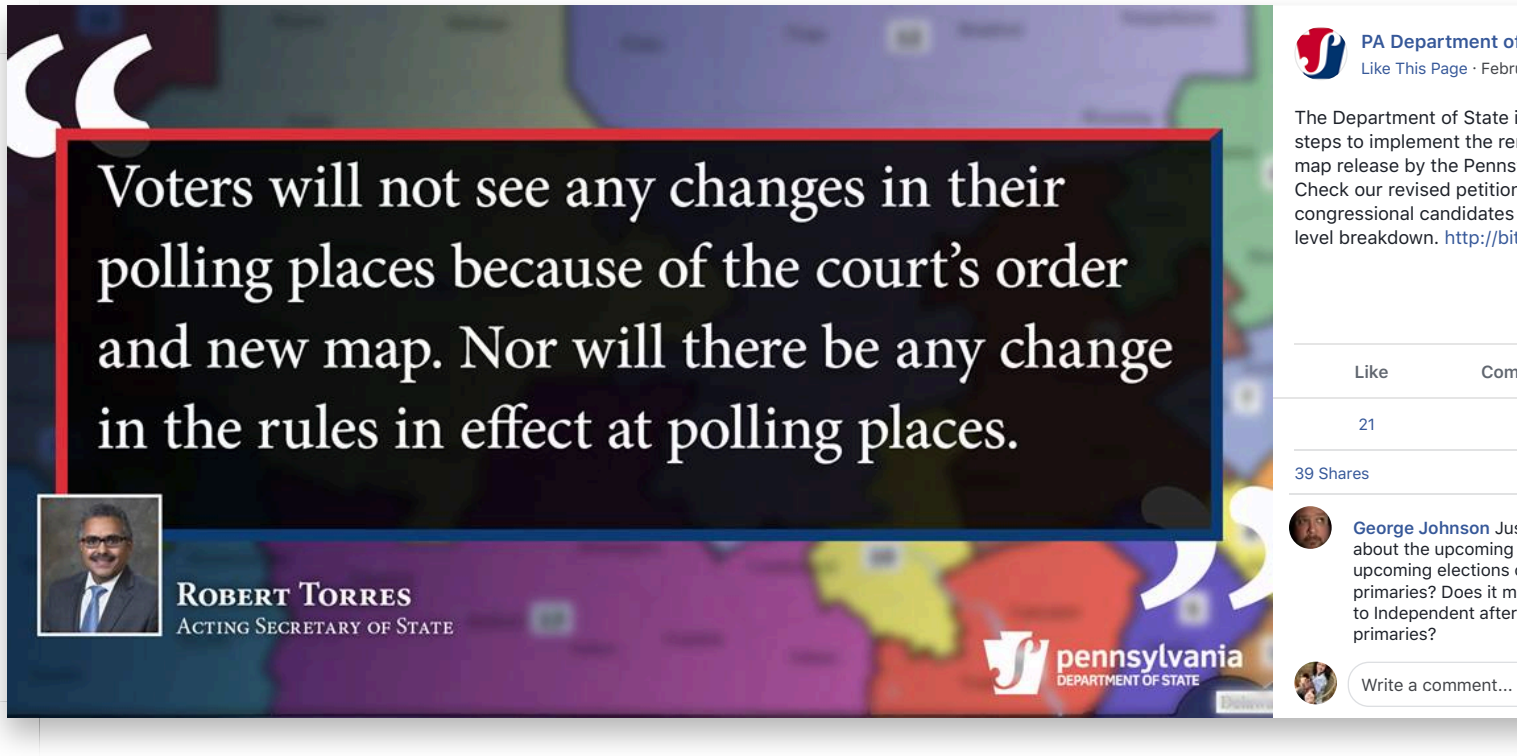
Voters will not see any changes in their polling places because of the court's order and new map. Nor will there be any change in the rules in effect at polling places.
ROBERT TORRES
ACTING SECRETARY OF STATE
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EXHIBIT 9

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

PROCEDURES TO ASSURE COMPLIANCE WITH THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT (UOCAVA) AND RELATED PROVISIONS OF THE PENNSYLVANIA ELECTION CODE
FOR EVERY GENERAL ELECTION
(MILITARY & OVERSEAS VOTERS PROTOCOL)

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This memorandum describes the policies and procedures that the Pennsylvania Department of State (DOS) will follow and direct the county boards of elections to follow for every general election to assure compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. §§ 1973ff-1973ff-7, which includes amendments to UOCAVA made by the Military and Overseas Voter Empowerment Act (MOVE Act), Pub. L. No. 111-84, the Pennsylvania Election Code (25 P.S. § 2600 *et seq.*), and Act 3 of 2002 (25 Pa.C.S. § 1101 *et seq.*).

I. Relevant Statutory or Judicial Deadlines Preceding the Absentee Balloting Process

1. The first business day in August is the deadline for the filing of nomination papers for minor political parties and political bodies. *See* the Consent Decree in *Hall v. Davis*, Civ. No. 84-1057 (E.D. Pa. 1984).

2. 7 days after the last day for the filing of nomination papers is the statutory deadline for electors to make objections to nomination papers. 25 P.S. § 2937.

3. 7 days after the last day for the filing of nomination papers is the statutory deadline for candidates of political bodies who have filed nomination papers to withdraw as candidates named on the November ballot. 25 P.S. § 2938(b). However, courts will permit withdrawals after the statutory deadline except under special circumstances, such as after the printing of the official ballots.

4. 85 days prior to the general election is the statutory deadline for candidates who were nominated by a political party to withdraw as candidates named on the November ballot. 25 P.S. § 2938(a). However, courts will permit withdrawals after the statutory deadline except under special circumstances, such as after the printing of the official ballots.

5. 15 days after the last day for the filing of nomination papers is the statutory deadline for Commonwealth Court to decide objections to nomination papers. 25 P.S. § 2937. However, this deadline is directory, not mandatory. In addition, an objector or candidate who loses in Commonwealth Court has a right to appeal to the Supreme Court of Pennsylvania.

6. 75 days before the general election is the deadline for political parties and political bodies to file substituted nomination certificates to fill vacancies caused by the

withdrawal of candidates nominated at the primary election or by nomination papers. 25 P.S. § 2941(a).

7. Under section 984 of the Election Code, 25 P.S. § 2944, the Secretary must certify the nominees to the county boards "as soon as possible" after 75 days before the general election – the date fixed for filing substituted nomination certificates. 25 P.S. § 2941(a).

8. *No later than* 70 days prior to the general election the Secretary of the Commonwealth must transmit to the county board of elections "a list, as he knows it to exist at that time, of candidates to be voted on in the county at the election…." 25 P.S. § 3146.5a(b). *The Secretary of the Commonwealth will act as promptly as prudence dictates under the circumstances to provide the county boards of elections with a list of the known candidates* 70 days prior to the general election *and will notify counties of changes to the list as they should occur until the Secretary is able to certify officially the names of the candidates who will appear on the general election ballot*.

II. Statutory Deadlines and Other Information Applicable to Military Electors Who Declare that They Live or Perform Military Service in an Extremely Remote or Isolated Area of the World

1. *No later than* 70 days prior to the general election county boards of election *must* commence to deliver and mail absentee ballots or "special write-in ballots" (as described in ¶ 5 below) to *certain* (as discussed in ¶ 2 below) qualified absentee "military electors" (as defined in ¶ 3 below) and *certain* qualified absentee electors who expect to be or are outside the territorial limits of the United States because their duties, occupation or business require them to be elsewhere during the entire period the polls are open for voting on the day of the election ("absentee electors living or traveling abroad"). 25 P.S. § 3146.5(a).

2. Absentee ballots or special write-in ballots must be delivered or sent no later than 70 days prior to the general election to qualified absentee "military electors" and qualified absentee electors living or traveling abroad *who have included in their application for an absentee ballot a statement that the elector "is unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely* ***remote or isolated*** *area of the world."* 25 P.S. § 3146.5(a)(emphasis added). This statement should be included in block 6 on the Federal Post Card Application (FPCA) available on the Federal Voting Assistance Program's website, www.fvap.gov, or in Section A of the state absentee ballot application available on the Department's website, www.votespa.com.

3. Under Pennsylvania law (25 Pa.C.S. § 1102), the term "military elector" is defined to include:

- A qualified elector who is or may be in the military service of the United States, *regardless of whether he/she is registered to vote*. *See also* 25 P.S. § 3146.1(a).

- A qualified and registered elector who is a spouse or dependent residing with or accompanying a person in the military service of the United States if, at the time of voting, the spouse or dependent is absent from the municipality of his/her residence. [As "military electors" under 25 Pa.C.S. §§ 1102 and 1324(c), these qualified electors may apply *at any time* for registration on an official registration application form or a form prescribed by the federal government, including the Federal Post Card Application prescribed by the Federal Voting Assistance Program.]

- A qualified and registered elector who is or may be in the service of the Merchant Marine of the United States, or a spouse or dependent residing with or accompanying a person who is in the service of the Merchant Marine of the United States, if at the time of voting he/she is absent from the municipality of his/her residence. [As "military electors" under 25 Pa.C.S. §§ 1102 and 1324(c), these qualified electors may apply *at any time* for registration on an official registration application form or a form prescribed by the federal government, including the Federal Post Card Application prescribed by the Federal Voting Assistance Program.]

- A qualified and registered elector who is or who may be in a religious or welfare group officially attached to and serving with the armed forces, or a spouse or dependent residing with or accompanying a person in a religious or welfare group officially attached to and serving with the armed forces, if at the time of voting he/she is absent from the municipality of his/her residence. [As "military electors" under 25 Pa.C.S. §§ 1102 and

1324(c), these qualified electors may apply *at any time* for registration on an official registration application form or a form prescribed by the federal government.]

- A qualified and registered elector who is or may be a civilian employee of the United States outside the territorial limits of the United States, or a spouse or dependent residing with or accompanying a person who is a civilian employee of the United States outside the territorial limits of the United States, if at the time of voting the elector is absent from the municipality of his/her residence. [As "military electors" under 25 Pa.C.S. §§ 1102 and 1324(c), these qualified electors may apply *at any time* for registration on an official registration application form or a form prescribed by the federal government.]

- **PLEASE NOTE:** *A qualified absentee elector who expects to be or is outside the territorial limits of the United States because his/her duties, occupation or business require him/her to be elsewhere during the entire period the polls are open for voting on the day of the election (*i.e.*, an "absentee elector living or traveling abroad"), but who is not a civilian employee of the United States serving outside of the territorial United States, is* <u>not</u> *a "military elector."* (*See* the definitions of "overseas citizen" and "military elector" at 25 Pa.C.S. § 1102.[1]) *Therefore, these "overseas citizens" who are not "military electors" must be registered to vote at least 30 days before the election as required for all other electors.* 25 Pa.C.S. § 1326(b)(4).

<u>Type of Voter</u>	<u>Voter Registration Requirement</u>	<u>Citation</u>
Qualified elector in the military service of the U.S.	Not required to register to vote	25 P.S. § 3146.1(a)
Spouse or dependent of a person in military service	May apply at any time to register to vote	25 Pa.C.S. §§ 1102 & 1324(c)
Individual in the service of the Merchant Marine and their spouse or dependent	May apply at any time to register to vote	25 Pa.C.S. §§ 1102 & 1324(c)
Individual in a religious or welfare group officially attached to and serving with the armed forces of the U.S. and their spouse/dependent	May apply at any time to register to vote	25 Pa.C.S. §§ 1102 & 1324(c)
Individual is a civilian employee of the U.S. or their spouse or dependent	May apply at any time to register to vote	25 Pa.C.S. §§ 1102 & 1324(c)
"Overseas citizens" who are not "military electors"[2]	Must register at least 30 days before the primary/election	25 Pa.C.S. § 1326(b)(4)

4. For those qualified absentee military electors and qualified absentee electors living or traveling abroad *who declare that they are unable to vote during the regular absentee*

[1] Examples of "overseas citizens" who are not "military electors" would include U.S. citizens: working for private sector employers abroad, traveling abroad on vacation, serving as Red Cross overseas volunteers not attached to the armed forces and serving as missionaries overseas who are not attached to the armed forces.
[2] For "overseas voters" under federal law who no longer reside in Pennsylvania, see Part IV, ¶ 4.

balloting period by reason of living or performing military service in an extremely remote or isolated area of the world and who apply for or are approved for an absentee ballot after 70 days prior to the general election, the county boards of elections *must* deliver or mail the absentee ballots or special write-in ballots *within 48 hours after approval of the application.* 25 P.S. § 3146.5(a). Applications from absentee military electors and absentee electors living or traveling abroad should be processed and approved or disapproved *promptly* upon receipt.

5. As described by section 1303(d) of the Election Code, "special write-in ballots" are to be "substantially [in] the form of [the] official absentee ballot *except that [the] special write-in absentee ballots shall contain blank spaces only under the titles of [the] offices in which electors may insert the names of the candidates for whom they desire to vote*…." 25 P.S. § 3146.3(d)(emphasis added). With the special write-in ballot, the county boards of elections are directed by the statute to "furnish to electors lists containing the names of all candidates … who have been regularly nominated under [the Election Code], for the use of [the qualified absentee military electors] in preparing their ballots." This list is to include the names of the candidates provided to the county board of elections by the Secretary of the Commonwealth (as described in Part I, ¶ 7, above).

6. In the past, some county election officials asked whether it is legally permissible for a county board of elections to prepare a "special write-in ballot" by inserting under the name of the public offices the names of the candidates provided to the board by the Secretary of the Commonwealth under section 1305.1 of the Election Code, rather than a blank ballot with a separate list of candidates, 25 P.S. § 3146.5a. In the opinion of the Department of State, *so long as the ballot is clearly labeled as a "special absentee ballot," and* <u>not</u> *an "official absentee ballot,"* and the ballot includes the necessary lines for electors to use to write in names that are not listed on the special ballot (just as there would be on an official absentee ballot), the purposes of sections 1303(d) and 1305(a) of the Election Code would be served consistently with the

rights of the electors, 25 P.S. §§ 3146.3(d) & 3146.5(a). *However, the instructions that the board of elections provides with this form of special absentee ballot should make clear that the special absentee ballot is unofficial and includes the names of the candidates known to be nominees or candidates for the public offices listed on the special absentee ballot.*

7. County election officials have also asked whether they may email a special write-in absentee ballot as a "PDF file" to each military or overseas civilian voter requesting an absentee ballot who also supplies the county with an email address. Section 1303(d) of the Election Code, 25 P.S. § 3146.3(d), requires counties to send the special write-in absentee ballot to military and overseas civilian voters when the official ballot is not yet available. Furthermore, the Department has interpreted 25 P.S. § 3146.5(b) broadly to include email as an acceptable method of delivering blank absentee ballots, including special write-in absentee ballots, to military and overseas civilian voters. *See* Part VI, ¶ 3. Emailing the special write-in absentee ballot will help to ensure that the military and overseas civilian voters receive their ballot in a timely manner so that they can return it to the county by the deadline, which is 7 days after the election. See Part VII, ¶ 1.

8. It is absolutely essential that county boards of elections adhere to the deadlines prescribed by the Election Code for those qualified absentee military electors and qualified absentee electors living or traveling abroad who declare that they are living or performing military service in an extremely remote or isolated area of the world and utilize a special write-in absentee ballot or other form of special absentee ballot in the circumstances described above.

III. <u>Statutory Deadlines and Other Information Applicable to Other Military Electors</u>

1. For qualified absentee military electors and qualified absentee electors living or traveling abroad who have *not* included in their application for an absentee ballot a statement

that the elector "is unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely remote or isolated area of the world," county boards of elections must, ***no later than 45 days prior to the election***, deliver or mail to those qualified absentee military electors and qualified absentee electors living or traveling abroad official absentee ballots (or, if not yet available, special write-in ballots). 25 P.S. § 3146.5(a) & 42 U.S.C. § 1973ff-1(a)(8)(A) (an amendment of the MOVE Act in 2009). **PLEASE NOTE:** Because state and federal laws require that county boards of elections send absentee ballots **no later than 45 days prior to the election,** and because the deadline always falls on a Saturday, the county board of elections must send out absentee ballots by the close of business Friday if the county is not open on Saturday.

2. For *all* qualified absentee military electors and qualified absentee electors living or traveling abroad who apply for or are approved for an absentee ballot after 45 days prior to the general election, the county boards of elections *must* deliver or mail an official absentee ballot or special write-in ballot *within 48 hours after approval of the application.* 25 P.S. § 3146.5(a) & 42 U.S.C. § 1973ff-1(a)(8)(B). Applications from *all* absentee military electors and absentee electors living or traveling abroad should be processed and approved or disapproved *promptly* upon receipt.

3. In the past, some county election officials asked whether county boards of elections may, *before* 45 days prior to the general election, deliver or mail special absentee ballots to qualified absentee military electors and qualified absentee electors living or traveling abroad who have *not* declared that they are unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely remote or isolated area of the world. It is the opinion of the Department of State that, as a service to qualified absentee electors – particularly those who are serving, living or traveling outside the United States – the Election Code allows a county board of elections to send a special write-in absentee ballot or

special, unofficial absentee ballot to the qualified absentee elector before the applicable statutory deadline of 45 days prior to the general election. However, county boards of elections should treat all similarly situated absentee military electors and qualified absentee electors living or traveling abroad equally. For example, if the board of elections decides to send an early absentee ballot to an elector in Iraq who has not declared his remoteness or isolation as a reason for receiving an early absentee ballot, then all such qualified absentee electors in Iraq should receive the same treatment.

IV. Rules for Applying for Absentee Ballots by Military Electors and Qualified Absentee Electors Living or Traveling Abroad

1. Military electors and qualified absentee electors living or traveling abroad may apply *at any time* before the election for an official absentee ballot. 25 P.S. § 3146.2(a).

2. In applying for an absentee ballot, military electors and qualified absentee electors living or traveling abroad may use any form supplied by the federal government, including the Federal Post Card Application (FPCA) form, an official form of the county board of elections, or any other form that includes:

- Home residence at the time of entrance into actual military service or federal employment.
- Length of time a citizen.
- Length of residence in Pennsylvania.
- Date of birth.
- Length of time a resident of voting district.
- Voting district, if known.
- Name.

- For a military elector, the elector's stateside military address, FPO or APO number and serial number.

- For an elector other than a military elector, the nature of the elector's employment, the address to which ballot is to be sent, and relationship where necessary.

25 P.S. § 3146.2(b).

3. **RESIDENCE OF MILITARY PERSONNEL**: In 2003, Congress amended the Servicemembers Civil Relief Act (formerly the Soldiers' and Sailors' Civil Relief Act of 1940) to add a new section 705, guaranteeing residency for military personnel. The new section provides:

> **§ 705. Guarantee of residency for military personnel**
>
> For the purposes of voting for any Federal office … or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—
>
> (1) be deemed to have lost a residence or domicile in that State, *without regard to whether or not the person intends to return to that State*;
>
> (2) be deemed to have acquired a residence or domicile in any other State; or
>
> (3) be deemed to have become a resident in or a resident of any other State.

50 U.S.C. § 595 (emphasis added). This provision of federal law is consistent with 25 Pa.C.S. § 1324(c)(2).

4. **RESIDENCE OF CIVILIAN OVERSEAS VOTERS**: Under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), all "overseas voters" as defined by UOCAVA are entitled to vote by absentee ballot in Pennsylvania in elections *for federal office* if they so qualify under UOCAVA, *irrespective of their continuing residence status under Pennsylvania law*. A civilian "overseas voter" under UOCAVA is defined to include:

- A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; and

- A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

42 U.S.C. §§ 1973ff-6(5)(B) & (C). **These overseas voters who reside outside the United States and no longer maintain a Pennsylvania residence under Pennsylvania law are *not* qualified to vote for state office under Pennsylvania law**, unless the overseas voter is a civilian employee of the United States outside the territorial limits of the United States or the spouse or dependent of such an employee. This exception for civilian employees of the United States and their spouses and dependents is found at 25 P.S. § 3146.1(g) & (h). Civilian "overseas voters" qualified to vote for federal office under UOCAVA but not qualified under Pennsylvania law to vote for state and local offices or on ballot questions are sometimes described as "***federal electors***." **PLEASE NOTE:** An example of a "federal elector" would include a U.S. citizen who will be 18 by the day of the general election, who was born in Pennsylvania, who spent at least the first day of his or her life in Pennsylvania and never returned to Pennsylvania to establish residency here. This "federal elector" may be sent an absentee ballot for only federal candidates for the general election. By contrast, if a U.S. citizen who will be 18 by the day of the general election, whose parents moved out of Pennsylvania the day before the individual was born, who lived his or her life abroad and did not establish residency in Pennsylvania is not considered a "federal elector," and cannot vote in either federal or state elections in Pennsylvania.

5. The application for an official absentee ballot for a military elector or qualified absentee elector living or traveling abroad must be made over the signature of the qualified elector or *an adult member of the elector's immediate family*. 25 P.S. § 3146.2(c).

6. Military electors and qualified absentee electors living or traveling abroad may submit original absentee ballot applications in person or through other means of delivery. All qualified absentee military electors as defined by 25 Pa.C.S. § 1102 *and* overseas electors as

defined by UOCAVA (*i.e.*, persons who *reside* outside the United States and are qualified to vote in Pennsylvania in the last place that they were domiciled before leaving the United States) may submit their *application* for an official absentee ballot by facsimile method. 25 P.S. § 3146.2(c). The Department has interpreted the submission of an absentee ballot by facsimile to allow counties to accept applications for absentee ballots by military and overseas civilian voters by email because email is an electronic form of delivery similar to a facsimile. *Although the board may approve an application for absentee ballot that is submitted to the board by electronic (email or facsimile) means, the* ***county election office must receive the original application before Election Day***. The absentee ballot of the UOCAVA absentee elector *may not be counted* "unless the elector's *original* application is received prior to the election by the county election office." 25 P.S. § 3146.2(c) (emphasis added).

7. As amended by Act 150 of 2002, section 1302(c) of the Election Code explicitly provides that "[t]he facsimile method shall *not* be acceptable for the official absentee ballot." 25 P.S. § 3146.2(c) (emphasis added).

8. Upon receipt of an application from a qualified but unregistered elector in active duty military service, the county board of elections must ascertain from the information on the application, the district register or any other source that the applicant possesses the qualifications of a qualified elector other than being registered to vote. *No application of a qualified elector in military service may be rejected for failure to include the prescribed information if the required information can be ascertained within a reasonable time by the county board of elections*. 25 P.S. § 3146.2b(a).

9. Upon receipt of an application from a qualified but unregistered military elector as defined by 25 Pa.C.S. § 1102, who is not personally in **active duty military service**, the county board of elections must ascertain from the information on the application or any other source that the applicant possesses the qualifications of a qualified elector. 25 P.S. § 3146.2b(b).

Such qualified UOCAVA electors may receive an absentee ballot but must register to vote no later than the date and time required to vote the absentee ballot – prior to Election Day. See ¶ 10 below regarding the procedures counties should use to register these UOCAVA voters. *See* 25 Pa.C.S. § 1324(c) and the table in Part II, ¶ 3.

10. To register a qualified UOCAVA elector, **who is not personally in active duty military service**, the county board of elections must take one of two steps depending on the absentee ballot application form that the UOCAVA elector submitted to the county. If a county receives a Federal Post Card Application (FPCA), which acts both as an application to register to vote and an application for an absentee ballot, the county shall use that FPCA form to process the UOCAVA elector's voter registration. However, if a county receives a state Application for Absentee Ballot form, then the county shall either send the UOCAVA elector a Voter Registration Mail Application (VRMA) form, or if the county has an email address for the elector, then the county can recommend that the elector download the VRMA from the Department's website, www.dos.state.pa.us or from www.votespa.com, complete it, sign it and return it to the county.

V. UOCAVA

1. Because the general election is an election that includes federal offices, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) applies. Under UOCAVA, state and county elections officials must "accept and process … any otherwise valid registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the [county voter registration commission or county board of elections] not less than 30 days before the election." 42 U.S.C. § 1973ff-1(a)(2).

2. UOCAVA defines absent uniformed services voter or overseas voter similarly to the manner in which Pennsylvania law defines "military electors" and those qualified absentee

electors living or traveling abroad. *See* 42 U.S.C. § 1973ff-6, 25 Pa.C.S. § 1102 and 25 P.S. § 3146.1. UOCAVA defines an "absent uniformed services voter" to include a "member of a uniformed service on active duty who, by reason of such active duty, is absent from the **place of residence** where the member is otherwise qualified to vote." 42 U.S.C. § 1973ff-6(1) (emphasis added). Likewise, Pennsylvania law at 25 Pa.C.S. § 1102 defines a "military elector" as an "individual in military service and the individual's spouse and dependants" without qualification as to where the individual in military service is serving his or her country. **Therefore, county boards of elections must treat all military voters alike, whether they are stationed overseas or are stationed outside their place of residence.** In following the definition of "military elector" under Pennsylvania law, *see* 25 Pa.C.S. § 1102, as it applies to those voters for voter registration, and in following the absentee balloting procedures of the Pennsylvania Election Code as they apply to military electors and qualified absentee electors living or traveling abroad, *see* 25 P.S. §§ 3146.1 – 3146.9, county boards of elections will comply with UOCAVA for all electors, *except civilian federal electors (see following paragraph*). Thus, county boards of elections must **send absentee ballots to all military electors**, both those overseas and stationed outside their place of residence.

3. Under UOCAVA:

- A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; and
- A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

42 U.S.C. §§ 1973ff-6(5)(B) & (C). **These overseas voters who reside outside the United States and no longer maintain a Pennsylvania residence under Pennsylvania law are known as "federal electors" and are *not* qualified to vote for state office under Pennsylvania law**,

unless the overseas voter is a civilian employee of the United States outside the territorial limits of the United States or the spouse or dependent of such an employee. (*See* Part IV, ¶ 4 above.)

4. In addition, UOCAVA requires county boards of elections (a) to permit overseas voters to use Federal write-in absentee ballots for the general election, 42 U.S.C. § 1973ff- 2(a); and (b) to use the official post card form for simultaneous voter registration application and absentee ballot application. 42 U.S.C. § 1973ff-1(a)(4). The Department has interpreted federal and state law to allow UOCAVA voters to use the Federal write-in absentee ballot to vote for both federal and state candidates.

5. Under UOCAVA, the Federal write-in absentee ballot may be used by any *overseas voter* – either (i) a qualified absentee uniformed services voter (as well as his/her absentee spouse or dependent); or (ii) a qualified absentee elector who resides outside the United States and its territories – *who makes timely application for a state absentee ballot, and who has not received his/her state absentee ballot*. 42 U.S.C. §§ 1973ff-2(a).

6. The Federal write-in absentee ballot is prescribed by the Federal Voting Assistance Program (FVAP), is posted on its website, www.fvap.gov, and includes a secrecy envelope and mailing envelope for the ballot, which can be printed and then folded and sealed prior to mailing. 42 U.S.C. § 1973ff-2(a). The Department has interpreted the use of the FVAP's envelopes for the FWAB to comply with the envelope requirements in section 1304 of the Election Code, 25 P.S. § 3146.4. Although a county board of elections is not required to accept an FWAB during a municipal election year, it may do so.

7. A Federal write-in absentee ballot must be submitted and processed in the manner provided by Pennsylvania law for absentee ballots.

8. A Federal write-in absentee ballot may *not* be counted –

- If the ballot was submitted by a civilian overseas elector from any location in the United States or its territories. However, any military elector in the United States

or overseas may use the Federal write-in absentee ballot. 42 U.S.C. § 1973ff-2(b)(1).

- If a state absentee ballot of the overseas voter is received in timely fashion by the county board of elections. 42 U.S.C. § 1973ff-2(b)(3). In order to be received in timely fashion, the county board of elections must receive the voted ballot by 5:00 P.M. on the seventh day following the date of the election, as long as the envelope was postmarked by the day before the election. 25 P.S. § 3146.8(g)(1).

9. In completing a Federal write-in absentee ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of the political party). 42 U.S.C. § 1973ff-2(c)(1). The same principle applies to the political parties' candidates for Presidential Elector. 42 U.S.C. § 1973ff-2(c)(2). Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or political party must be disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained. 42 U.S.C. § 1973ff-2(c)(3).

10. An overseas voter who submits a Federal write-in absentee ballot and later receives a state absentee ballot may submit the state absentee ballot. In that case, the overseas voter should make every reasonable effort to inform the county board of elections that the voter has submitted more than one ballot. 42 U.S.C. § 1973ff-2(d).

11. Under Pennsylvania law, the Federal Post Card Application (FPCA) form for voter registration and absentee ballot application is a form that is acceptable both for voter registration and the issuance of an absentee ballot by any Pennsylvania citizen who is a "military elector" as defined by Pennsylvania law. *See* 25 Pa.C.S. §§ 1102 & 1324(c). Under UOCAVA, the FPCA also must be accepted from any Pennsylvania citizen who lives outside the United States and is qualified to vote in Pennsylvania. The FPCA is available on the Federal Voting Assistance Program's (FVAP's) website, www.fvap.gov.

12. Under the Military and Overseas Voter Empowerment (MOVE) Act Amendments to UOCAVA in 2009, an FPCA submitted by an absent uniformed services voter or overseas

voter shall be considered an application for an absentee ballot for each subsequent election for federal office held in the Commonwealth of Pennsylvania during that calendar year. 42 U.S.C. § 1973ff-3.

13. Also with the passage of the MOVE Act amendments to UOCAVA in 2009, UOCAVA now requires: "Each State [to] . . . designate not less than 1 means of electronic communication – for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications." 42 U.S.C. §§ 1973ff-1(a)(6)(A) & (e)(1)(A).

VI. Delivery of Blank Absentee Ballots

1. The Election Code directs county boards of elections to send absentee ballot materials to qualified absentee military electors and qualified absentee electors living or traveling abroad in transmittal envelopes that have printed across the face of the envelope two parallel horizontal red bars, between which are the words: "Official Election Balloting Material Via Air Mail." 25 P.S. § 3146.4.

2. The absentee ballot materials must include detailed instructions on the procedures to be observed in casting an absentee ballot, together with a return envelope upon which is printed the name and address of the voter registration commission of the county and the same red bars and words, along with an indication that the envelope may be mailed "Free of U.S. Postage, Including Air Mail." 25 P.S. § 3146.4.

3. The Department has interpreted section 1305(b) of the Election Code, 25 P.S. § 3146.5(b), broadly to include email as an acceptable method of delivering blank absentee ballots to military and overseas civilian voters. In addition, the Department has stated that county boards of elections may deliver absentee ballot materials to qualified absentee military electors and

qualified absentee electors living or traveling abroad in any manner that is at least as expeditious as Air Mail, including express or overnight mail.

4. With the passage of the MOVE Act amendments to UOCAVA in 2009, UOCAVA now requires: "Each State [to] . . . designate not less than 1 means of electronic communication – for use by States to send voter registration applications and absentee ballot applications" to absent uniformed services voters and overseas voters. 42 U.S.C. §§ 1973ff-1(a)(6)(B), (e)(1)(A) & (f)(1)(A). Furthermore, the MOVE Act amended UOCAVA to provide that a "State may, in addition to the means of electronic communication so designated, provide multiple means of electronic communication to absent uniformed services voters and overseas voters, including a means of electronic communication for the appropriate jurisdiction of the State." 42 U.S.C. §§ 1973ff-1(e)(2). The Department designated the following three means of electronic communication for counties to send blank absentee ballots to absent uniformed services voters and overseas voters:

- Use the SURE system that the Department has developed;
- Use a system that the county has developed, provided that the county informs the Department in advance; and
- Use the electronic transmission (fax) system that the FVAP has developed for election officials, which is available on the FVAP website at http://www.fvap.gov/leo/fax-email-guidelines.html. The FVAP's Electronic Transmission Service (ETS) enables local election officials to transmit and receive election materials via toll-free fax to/from Uniformed Services members and overseas citizens. A county can use the FVAP's toll-free electronic transmission service at 1-800-368-8583 to fax a blank ballot to a UOCAVA voter through the FVAP.

VII. Return of Voted Absentee Ballots

1. Qualified absentee military electors and qualified absentee electors living or traveling abroad, as defined at sections 1301(a) – (h) of the Election Code, 25 P.S. sections 3146.1(a) – (h), must have their absentee ballots received by the county board of elections no later than 5:00 PM on the seventh day following the election, as long as the ballot is postmarked no later than the day preceding the election. 25 P.S. § 3146.8(g)(1). The Department has determined that a voted ballot may be returned in person, through the U.S. Mail service, including Air Mail service, or by express or overnight mail. *See* 25 P.S. § 3146.6(a). As stated in Part IV, ¶ 7 above, "[a]s amended by Act 150 of 2002, section 1302(c) of the Election Code explicitly provides that "[t]he facsimile method shall *not* be acceptable for the official absentee ballot." 25 P.S. § 3146.2(c) (emphasis added). Furthermore, secrecy of the ballot must be maintained. *See* Article VII, § 4 of the Pennsylvania Constitution and 25 P.S. § 3031.7(1).

VIII. Reports by the County Boards of Elections to the Department of State – Post-Election

1. Section 703(a) of the Help America Vote Act of 2002 (HAVA) amended section 102 of UOCAVA to "require each State and unit of local government which administered [a general] election" to "submit a report to the Election Assistance Commission [EAC] on the *combined number* of absentee ballots *transmitted* to absent uniformed services voters and overseas voters (including federal electors residing abroad) for the election *and* the *combined number* of such ballots which were returned by such voters and cast in the election…." 42 U.S.C. § 1973ff-1(c)(emphasis added).

2. Section 102(c) of UOCAVA also requires that (a) the States and local government units that administer elections (*i.e.*, the county boards of elections) make their reports to the EAC "[n]ot later than *90 days after the date of each regularly scheduled general election for Federal office*"; (b) the local government units (*i.e.*, the county boards of elections) make their reports

through the State; and (c) the States make their reports "available to the general public." 42 U.S.C. § 1973ff-1(c)(emphasis added).

3. Therefore, under new section 102(c) of UOCAVA, the Department of State and the county boards of election are required, within 90 days after the election, to report to the EAC the combined number of absentee ballots transmitted to *all* absent uniformed services voters and overseas voters (including federal electors residing abroad) – irrespective of when those voters applied for an absentee ballot – *and* the combined number of absentee ballots returned to the county boards of elections from and cast by all absent uniformed services voters and overseas voters (including federal electors residing abroad).

4. As defined by section 107 of UOCAVA (42 U.S.C. § 1973ff-6), the voters whose absentee ballots must be counted and reported to the EAC under section 102(c) include:

- Members of the uniformed services on active duty who, by reason of such active duty, are absent from the place of residence where the member is otherwise qualified to vote.
- Members of the merchant marine who, by reason of service in the merchant reason, are absent from the place of residence where the member is otherwise qualified to vote.
- Spouses or dependents of the members described above who, by reason of the active duty or service of the member, are absent from the place of residence where the spouse or dependent is otherwise qualified to vote.
- Persons who reside outside the United States and its territories and are qualified to vote in the last place in which they were domiciled before leaving the United States.
- Persons who reside outside the United States and its territories and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States and its territories.

5. Because this EAC report is due 90 days *after* the election and will include the absentee ballots transmitted and received by county boards of elections through the deadline one week after the election for receipt of absentee ballots from military and overseas electors, the

Department of State will instruct the county boards of elections to report their numbers sometime after Election Day. **However, the Department of State wants to alert the county boards of elections to track the total number of absentee ballots transmitted and received from these voters (as defined by UOCAVA) so that they might be able and ready to make their reports to the Department for inclusion in the report to the EAC.**

NOTE: Act 18 (Voter ID) does not apply to UOCAVA voters voting by absentee ballot.

EXHIBIT C

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

JACOB CORMAN, in his official capacity as Majority Leader of the Pennsylvania Senate, MICHAEL FOLMER, in his official capacity as Chairman of the Pennsylvania Senate State Government Committee, LOU BARLETTA, RYAN COSTELLO, MIKE KELLY, TOM MARINO, SCOTT PERRY, KEITH ROTHFUS, LLOYD SMUCKER, and GLENN THOMPSON, Plaintiffs, v. ROBERT TORRES, in his official capacity as Acting Secretary of the Commonwealth; JONATHAN M. MARKS, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation, Defendants.	:	CIVIL ACTION No. 1:18-cv-00443-CCC-KAJ-JBS Three-Judge Panel Pursuant to 28 U.S.C. § 2284(a) Circuit Judge Kent Jordan Chief Judge Christopher Conner District Judge Jerome Simandle

DECLARATION OF MICHELE D. HANGLEY IN SUPPORT OF DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Michele D. Hangley declares under the penalty of perjury pursuant to 28 U.S.C. § 1746 that:

I am a shareholder of the law firm of Hangley Aronchick Segal Pudlin & Schiller, counsel for Defendants Robert Torres, in his official capacity as Acting

Secretary of the Commonwealth, and Jonathan M. Marks, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation. I make this declaration to submit certain documents in support of Defendants' Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction.

Attached as Exhibit 1 is a true and correct copy of a transcription of the audio recording provided by the Pennsylvania Supreme Court of the oral argument held on January 17, 2018 in *League of Women Voters, et al., v. The Commonwealth of Pennsylvania, et al.*, No. 159 MM 2017 (the "State Court Litigation").

Attached as Exhibit 2 is a true and correct copy of a letter from Kathleen Gallagher to the Pennsylvania Supreme Court enclosing a letter from Michael C. Turzai and Joseph B. Scarnati, III to Governor Wolf, dated February 13, 2018, which was filed with the Pennsylvania Supreme Court via PACFile in the State Court Litigation, and is available on the docket.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 2, 2018.

/s/ Michele D. Hangley
MICHELE D. HANGLEY

EXHIBIT 1

PENNSYLVANIA SUPREME COURT

audiotaped hearing of

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA et al.,

Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA et al.,

Respondents.

BEFORE: CHIEF JUSTICE THOMAS SAYLOR and the JUSTICE PANEL

A P P E A R A N C E S:

DAVID GERSCH, ESQUIRE
for Petitioners

MARK ARONCHICK, ESQUIRE
for Governor Wolf

CLIFFORD LEVINE, ESQUIRE
for Lieutenant Governor Stack

KEITH MARC BRADEN, ESQUIRE
for Speaker Turzai

JASON TORCHINSKY, ESQUIRE
for President Pro Tem of the Senate

Lawrence Davis, ESQUIRE

MR. TABAS, ESQUIRE,
for Interveners

P R O C E E D I N G S

COURT CRIER: The Honorable Chief Justice and Justices of the Supreme Court of Pennsylvania.

Oyez! Oyez! Oyez! All man or persons who stand (inaudible), who otherwise have business may now appear and they shall be heard.

God save the Commonwealth and this Honorable Court. Please be seated.

CHIEF JUSTICE SAYLOR: Good morning. We have a single case listed for this argument session, so I'd ask the Court Crier to call the case and then I'll try to state the case briefly before we begin arguing.

COURT CRIER: League of Women Voters versus the Commonwealth of Pennsylvania, Mr. Dave Gersch (ph), Mr. Mark Aronchick (ph), Mr. Clifford Levine (ph), Mr. Keith Marc Brady (ph), Mr. Jason Torchinsky (ph), Mr. Lawrence Davis (ph).

THE COURT: Mr. Gersch, you start the argument.

This Court has exercised extraordinary jurisdiction to entertain a challenge by

petitioners, the League of Women Voters, and a group of Democratic voters, to the present congressional districting plan in Pennsylvania.

The Commonwealth Court has lent its assistance in addressing factual matters and offering proposed conclusions recommending that this challenge be rejected. As I understand it, petitioners intend to present the main argument in support of the challenge.

Counsel for the respondents Governor Wolf and Lieutenant Governor Stack will follow with brief arguments supportive of the petitioner's position.

We will then hear from counsel for respondent's President Pro Tem of the Senate Scarnati, and Speaker of the House Turzai who opposed relief. Counsel for intervenors, a group of Republican voters, will follow with a brief supplemental argument.

The case has been well and ably briefed. The parties are all represented by experienced appellate advocates. The Court has studied the submissions and is very aware

of both the issue involved -- or implicated and the arguments of counsel which -- all of which is going to help us move this matter along.

While we do have six lawyers who are going to make oral presentations to the Court, as always since it is an overarching issue, we very much suggest and appreciate avoiding redundancy.

With that, I'd appreciate you introducing yourself and beginning argument.

MR. GERSCH: Thank you, Your Honor. David Gersch on behalf of petitioners, Members of the Court.

To begin this case, I'd ask the Court to imagine one of our petitioners, Bill Marks (ph), high school civics teacher, former U.S. Army helicopter pilot, imagine him standing on line waiting to vote and a gentleman comes up to him and says, good morning, Mr. Marks, we decided to move your district.

We don't want you to vote in this district. We passed a law that says you're going to vote in a different district. The reason we decided to do that is because we

think that you and your neighbors are likely to vote for the opposition candidate. If you vote for the opposition candidate in this district, the government's candidate, or the ruling party's candidate, might lose, and so we're moving you to a different district.

Just to be clear, we're not doing this to equalize population, we're not doing this to maintain contiguity of districts, we're not doing it because it will avoid municipal or county splits, and we're certainly not doing it to maintain compactness. Indeed, your new district will be the opposite of compact. We're doing it because we don't like the way you vote. Now, that's this case.

Of course they didn't come to Mr. Marks while he was standing on line. I took a liberty there. Of course they didn't admit that that's what they were doing, but that is in fact what happened and that is what the Commonwealth Court found, that this is a case of intentional discrimination and that the boundaries of the districts were made so as to advantage the republicans and disadvantage

the democrats.

Your Honor, it's our position that this is a straightforward case of viewpoint discrimination. The government under Pennsylvania's Constitution is not permitted to sort voters into districts, groups of voters into districts, based on whether or not the government thinks that it's going to like the way the voters cast their ballots.

FEMALE JUSTICE: Mr. Gersch, would you pull your mic to the center, please.

MR. GERSCH: To the center?

FEMALE JUSTICE: Closer to your face. Thank you.

MR. GERSCH: Certainly. So this case is brought -- our main count is a claim of viewpoint discrimination. It's brought under the Pennsylvania Constitution, Article 1, Section 7.

We've canvassed the history of that in the brief. There's an excellent amicus brief from the AFL and related unions doing an Edmond's analysis of this. The Court of course has done an extensive Edmond's analysis in the Papps' (ph) case, and the

bottom line is that the Pennsylvania's protection for free speech and free expression goes back to the 1776 Constitution, which of course predates the U.S. Constitution.

This Court has held that the Constitution of Pennsylvania provides broader protection, in particular it expressly protects freedom of expression by reference to the textual language free communication.

The Court has held in the Papps' case, that expressive conduct -- that infringements on expressive conduct are to be evaluated under the strict scrutiny test, that was a case of course involving nude dancers in DePaul. The Court went the additional step and said for campaign donations, political expressive conduct, those -- infringements on those would also be judged under strict scrutiny.

Here we deal with the right to vote, which is the core fundamental freedom. As the Court said in Bergdog versus Kane (ph), it's important because it preserves all other rights.

So this is a case where we say strict scrutiny applies, because voting is expressive conduct. I don't understand the other side to object that that is the correct test that an ordinary freedom of speech or free expression case, that's not going to be their objection.

Their objection, which I will come to, is that there should be an exception in this instance. What I have recited so far is just a traditional application of the law. Strict scrutiny should apply here.

The other reason of course strict scrutiny should apply is because not only does this involve a burden on the right to vote, but this is an act by the government which threatens to undermine the essence of representative democracy. So those are all reasons why strict scrutiny should apply here.

Was this a case of discriminating in the voters, yes, the Commonwealth Court found so and there was an enormous amount of evidence on which the Commonwealth based its finding.

I know the Court is familiar with the

record. I'll be brief on this point, but we can think of the record -- the evidence as falling into essentially three categories -- the maps themselves, the results, and the objective metrics presented by various political scientists and mathematicians.

On the shapes of the maps themselves, the first thing I would commend to the Court is the map of the 7th District. The map is I think almost nationally infamous as an example of a non-compact map.

We have a version of it in the record. It's Petitioner's Exhibit 83. It's on page 11 of our brief. What you can see there, because we've color coded the election results from 2010 Pennsylvania Senate election and you can see that what they did was they appended the eastern half of the map -- I'm sorry, the eastern half of the map, which is more democratic leaning to a very red western half of the map with a sliver, which is as wide as a single medical facility. The map is barely contiguous. In another place, it's as wide as a single restaurant, Creed's Seafood & Steaks.

There's no explanation for why the map is presented -- is made that way from legislative response --

MALE JUSTICE: Counsel, before you move on from District 7 or District 12, in the federal cases there's a raging question of whether you can attack the statewide map where you have to attack as in racial gerrymandering the individualized district.

Is that issue in this case at all?

MR. GERSCH: We don't believe so, Your Honor. That decision was -- that issue was decided in Urfer (ph). In Urfer this Court said you should attack the entire map or challenge the entire map. I think the Court was quite correct in its reasoning that the map is like a jigsaw puzzle and it doesn't make sense to take it one district at a time.

So with respect to the maps, that's the seventh. We also have -- I think it would be useful to think about the map of the 4th District, which includes where we're sitting now.

The 4th District is this entirely ruby

red district and then they attach at the very top of it, the blue Harrisburg, but not all of Harrisburg, just a part of Harrisburg.

This is unprecedented. Again, no explanation from legislative respondents as to why this was done. You can see what happened is they cracked Harrisburg in half and put it into a district which is entirely republican.

The 6th District -- I'm not going to go through them all. This will be the last one. But the 6th District is another example. You can see there's a hole in the 6th District where they extracted Reading, which is the county seat of Berk County, always been together with the rest of Berk County. They extracted and they attached it to the 16th through this narrow column.

Again that's -- if you look at the color-coded map, which is on page 18 of our brief, you'd see it intends to get the blue Reading out of the rest of the 6th and attach it to a republican leaning 16th District.

So the maps themselves are enormously powerful evidence. They're visually not

compact. They're visually -- you can see the cracking. And, again, no evidence at all from the other side suggesting that this was done for anything other than partisan purposes.

FEMALE JUSTICE: Counsel, might I ask at this point, the Commonwealth Court seemed to indicate that in the redistricting context, there were essentially no criteria that needed to be followed, because the Pennsylvania Constitution did not so provide for a Congressional Redistricting and there's no other statutory basis for that.

Your argument is based upon the presumption that traditional districting criteria do apply, compactness, contiguity, equal, don't split political subdivisions.

From where do you draw that conclusion that those traditional criteria in fact apply in this context?

MR. GERSCH: Yeah, so that's not -- there's a Constitutional provision of course in Section 16, which applies this to the legislative maps. There's not a complimentary provision for the congressional

maps, but this Court has said -- I'm forgetting whether it was Mellow or Holt --

THE COURT: Mellow.

MR. GERSCH: In Mellow that those are the, thank you, Your Honor, that those same principals would apply in a congressional race. The other reason they're important is they give you a neutral guidepost, which enables you to -- and maybe I'll go out of order here and skip ahead.

For someone like Dr. Chen (ph) who simulates maps, he's able to use those principals to simulate neutral maps and then compare them to Act 131.

So now you have a context. You can say to yourself, well, what would the maps look like if they'd been drawn without partisanship, what would they look like if they respected the traditional criteria for Mellow.

What Dr. Chen found was that -- he drew 500 maps at random, respecting those traditional criteria, and not one of them looks remotely like Act 131. The 500 maps are all much more compact. They don't split

as many counties. They don't split as many municipalities. Of course they don't produce the 13-5 republican/democratic split that we've had for the last three congressional elections. When Dr. Chen scored those maps, the most common outcome is a 9-9 even republican/democratic split. The next most common is a 10-8 democratic split.

So by creating a neutral map, or neutral set of maps, that can be compared to Act 131, we can see just how partisan Act 131 is.

MALE JUSTICE: Mr. Gersch, is any Court, state or federal, ever said that there can't be as a matter of either state or federal constitutional law a partisan aspect to redistricting?

MR. GERSCH: I don't know a court has ever said there can never be one, but neither has a court upheld -- neither has a court had occasion to have to deal with that issue in the context of a freedom of expression case. Our position is you can't have a little bit of discrimination against the voters.

FEMALE JUSTICE: You're asking us to decide that no partisan considerations may be

a part of the drawing of the map?

MR. GERSCH: Not partisan -- certainly not partisan by which we mean the use of -- as a basis for discriminating against voters based on partnership; that is, the lines of the district should not be drawn based on how -- which party the voters favor.

FEMALE JUSTICE: So you are asking us to go further than any other court has gone on that issue?

MR. GERSCH: I think the North Carolina comes close, the decision that came out last week. I don't think they phrased it in those terms necessarily.

MALE JUSTICE: Mr. Gersch, this plan's obviously been in effect for five-and-a-half years. But currently what is the registration breakdown in our 18 congressional districts, Republican versus Democrat? In other words, of the 18, how many have a Republican majority registered voters and how many of the 18 have a Democratic majority of registered voters?

MR. GERSCH: I don't believe the exact number. I believe the Democrat -- there are

more Democratic registered -- there are more counties with Democratic registered voters.

THE COURT: You're talking counties. We're only interested --

MR. GERSCH: I'm sorry, districts, districts.

THE COURT: There's 18 congressional districts. Maybe you could consult your cocounsel, or whoever you need to, and tell me how many of these of our 18 districts have majority Democrat and majority Republican.

MR. GERSCH: I'm not sure I know the answer, Your Honor.

MALE JUSTICE: Isn't that salient?

MR. GERSCH: No, because what the political scientists in the case testified to is that the way people in today's world determine voting preference is by actual votes over the past year.

So in other words, the most predictive way to look at how an individual voter or group of voters -- they actually say groups of voters.

The most predictive way to determine how a precinct is going to vote in the next

election is how they vote in the past elections, not how they're registered.

MALE JUSTICE: Let's say hypothetically, and somebody will know, because we have able counsel and this is Congressional Redistricting, so hopefully some lawyer in our lineup is going to know between the 18 congressional districts.

Let's say hypothetically, and we'll get the answer, nine of them have a majority of Democratic registered votes and nine of them have a majority of Republican registered voters, it's not bad, is it?

MR. GERSCH: Well, again, for purposes of our claim, and I may not be understanding -- I may not be taking the Court's question and I want to make sure I understand it --

MALE JUSTICE: It may not be a good question, but it seems to me that if I'm a Democrat running in a congressional district that has a majority Democrats, that's good, same for Republicans.

MR. GERSCH: I do understand the question. We don't think the record supports

that conclusion. What the record says is that the way you determine whether the district is likely to go Democratic or Republican is to look at actual prior votes cast, not registration.

Dr. Chen testified to that. No one -- they had two eminent political scientists, they were found not credible, but they have real credentials, neither of their political scientists contended that registration is a thing you look at. It's not. What political scientists look at and what politicians look at are how do people vote in actual elections.

If I may, also part of the evidence in this case was Dr. Chen's testimony with respect to what are called the Turzai files. They're the files that Speaker Turzai produced in the Aiger (ph) case.

In those files what you can see is they rated every county, they rated municipalities, and they rated down to the precinct level. Yes, they do have some registration data, but most of the data they have for those divisions -- county,

municipality, down to the precinct level -- is how did these people vote in other elections. So that's where we think the proper focus should be.

MALE JUSTICE: May I ask you, sir, the Federal Constitution relegates the state legislature's redistricting; correct?

MR. GERSCH: States are supposed to create the districts under the Constitution.

MALE JUSTICE: Through their legislatures?

MR. GERSCH: That's what the text of the Constitution says. I think there are court cases that make clear that state courts get to review the acts of legislatures.

MALE JUSTICE: I'm not asking about that. You're anticipating. It's okay. My point -- and I'm not an originalist or textus, goodness knows, but when the framers said legislatures should draw these maps, I bet they knew legislatures were political bodies.

So isn't it implicit in that design that some amount of partisanship, you can cross the line and that's why you get judicial

review for constitutionality, but some amount of partisanship was necessarily contemplated when this was provided not to an independent commission, not to the judiciary, but to the legislature.

MR. GERSCH: Your Honor, that is -- I appreciate the question, because that's an argument made by the other side. We reject that proposition.

I think a great case to look at is Elrod versus Burns (ph), that was a case in which in Cook County the custom was -- whichever sheriff won the election, he got to -- if they changed parties, he got to fire all the employees who had been there before.

So when a Democratic sheriff was elected in Cook County, he fired the Republican employees and they sued. The concept of patronage dates back all the way. Indeed the decision of the sheriff was struck down by the majority in that case and what Justice Powell wrote in his dissent -- the first sentence of his dissent is, the Court holds unconstitutional practice that dates to the founding of the Republic.

The reason that happened -- the case played out the way it does is because confronted with what I'll call modern notions of what the First Amendment means, and for purposes of Pennsylvania, freedom of expression, we don't let the government make those sorts of decisions based on people's political preferences.

We don't allow the government to decide, no, you won't be able to get this job, because you're a Republican and the same -- we're asking for the same thing here. We're asking for the same thing.

Reynolds versus Simms (ph), very similar case. I think the comment of the Supreme Court when confronted with the fact was understood at the time that all of the districts in the United States, virtually all the districts, had this very malapportioned population, typically the rural districts would be favored at the expense of the urban districts, and the Court says, it's not -- it's not history that's on trial. What we're evaluating is the practice. Of course Reynolds versus Simms struck that down in

favor of the one person, one vote.

FEMALE JUSTICE: Counsel, can I just ask for some clarification, because I was not of the impression coming in here today that it was petitioner's position that there could be no partisan considerations, no political considerations in the redistricting process, that was not my understanding.

Let me just give you an example. In order to have equal populations, the legislature needs to pick up 7,000 votes. They have a choice. They could pick up 7,000 votes from a contiguous county to the east or they could pick up 7,000 votes at a contiguous county to the west.

The county to the west favors Democrats. It's a Democratic legislature and a Democratic governor. Can they not in fact in order to meet the equal population requirement choose the 7,000 voters to the -- to be -- to the east?

MR. GERSCH: The Democrats -- favor the Democrats?

FEMALE JUSTICE: Yes.

MR. GERSCH: That's what we're arguing

against. I want to draw a distinction --

FEMALE JUSTICE: Let me just ask you why. If in general -- if in general, which is -- actually I thought I was articulating what your argument was.

If as a matter of generality in doing the redistricting, the traditional criteria are followed and there is an attempt to follow the traditional criteria but as part of that overriding essence of the traditional criteria there is a partisan choice made in order to keep a district compact or in order to keep the district of equal population, I was of the understanding that as long as the partisan intent did not subjugate all of the traditional criterion, then that amount of partisanship is acceptable in this process that has been recognized as a political process?

MR. GERSCH: I think what Your Honor is correctly picking up was our fallback position. We said if the Court -- our main position is that the Court should rule that there is no -- that partisanship shouldn't be used -- that people shouldn't be allowed to

discriminate based on how voters vote, but if the Court felt the need to limit that principal, that the way the Court could limit it would be to provide that -- the map would only offend constitutional principals if the traditional districting criteria were subordinated.

JUSTICE TODD: As I understood your argument, Mr. Gersch, and this is in follow-up to Justice Donohue's question, your argument is that based on existed -- existing constitutional principals as articulated by our courts in Pennsylvania and by the U.S. Supreme Court, you prevail regardless of whether we go that extra mile but that you are asking us to go further than other courts have gone and say that no partisanship principals may be considered; is that correct?

MR. GERSCH: Justice Todd, I think that's a fair statement. Again, we prefer to phrase it in terms of you can't discriminate based on partisanship, but yes --

JUSTICE TODD: If I add the adjective discriminatory partisanship principals, then

you would agree with me?

MR. GERSCH: Yes, yes. I do want to distinguish between partisan and politics. So there are lots of political decisions that don't involve legislatures or Executive Branch making decisions that discriminate on the basis of how people are going to vote. If you have to draw a line, say, in Philadelphia, the line's going to have to be drawn no matter what and it doesn't mean that it has to be drawn by reference to how people are likely to vote in that election, or in any election. It's going to be a political decision.

There may be issues of trading with politicians that have nothing to do with partisanship. There may be, you know, one representative -- legislator, this would be the legislator's decision, legislator who is particularly powerful or is giving a favor or wanting a favor, all the things that go on in politics.

Not all political decisions involve discriminating against people based on what their affiliation is. We take the position

that that shouldn't be allowed in the voting.

JUSTICE BAER: Counsel, in furtherance of Justice Donohue and Justice Todd, I think we're on the same (inaudible), I want to change the calculus. I think what you're saying is politics is distinct from partisanship and partisanship equals viewpoint discrimination.

I'm not sure respectfully I buy that, but I have an open mind to listen to that, but here's what I want. Instead of sort of picking at it, I don't -- personally I don't believe that this case is as easy as if there's partisanship, there is unlawful invidious viewpoint discrimination.

So assuming that that doesn't carry the day, what has alluded every court that has looked at this is a test. So when we're deciding whether we have intentional viewpoint discrimination, which I think is your gravamen, do you have a test that we should apply? I mean, is the test as easy as is there partisanship or is there more to it?

MR. GERSCH: No, the test is whether there is intentional discrimination based on

how people vote that burdens the voters by diluting their vote in in some way and devaluing their vote.

As I said, we've offered that as a fallback. The Court can add the limiting principal that the plaintiff would also -- the petitioner would also have to show that the traditional districting principals were subordinated.

In other words -- and I think we make -- this goes I think to your point, Justice Baer. I think we make the point that we would satisfy that test as well; that is, in this case, you can see -- that's why we refer to these maps, like Map 7 and also Professor Chen's work in which he compares maps which comply with traditional principals versus Act 131. In this case, we would meet the subordination test and we would meet it easily.

JUSTICE BAER: Assume we find that there was no intent on behalf of the legislature, does that impact anything?

MR. GERSCH: If there was no intent?

JUSTICE BAER: No intent.

MR. GERSCH: Well, then there wouldn't be a violation. I think the Commonwealth Court found that and I think the evidence would abundantly support that.

JUSTICE BAER: I'm trying to explore a test. We have to write this. Again a test is I think alluded every court that's tried to grapple with this. I hope it doesn't allude us.

Again, I respectfully start from the premise I don't think it's as easy as partisanship. So now we have partisanship. We look at traditional redistricting principals, continuity, compactness, contiguousness. I'm not splitting up copies (ph) or municipalities.

But beyond all that, does the efficiency gap matter, does partisan symmetry matter, does the mean medium test matter, does the Macroff's (ph) chain matter, is it a totality of the circumstance, or do you pick a linchpin from any of this beyond, again assuming we reject that the linchpin and the be all and the end all is partisanship?

MR. GERSCH: So the factors you were

mentioning, those things are evidence. We don't think they incorporated into the test. Those are the ways in which you prove your case by a preponderance of the evidence. I'll come back to them for a moment.

The suggestion that we're making, our view of the case is, is there viewpoint discrimination that burdens the voters and maybe you add on the limiting principal that the traditional criteria also -- the traditional districting criteria were subordinated as well.

The question of what does the efficiency gap show us, what does Dr. Chen's work show us, those go to whether we proved that the -- that the voter's expression was burdened. Those go to whether we met the test.

In this case, as I said, I think the evidence is overwhelming. Dr. Worshor (ph), for example, found that this was, under the efficiency gap, this is the worst map in Pennsylvania's history. In one year, it was the second worst map in the entire country.

CHIEF JUSTICE SAYLOR: Mr. Gersch, could you move toward a summation and then we're

going to move on and hear from the other lawyers.

FEMALE JUSTICE: May I ask him one more question?

CHIEF JUSTICE SAYLOR: Yes.

FEMALE JUSTICE: Before you sum up, Mr. Gersch, if we are to -- if we were to accept the petitioner's argument here as to constitutionality, then we have a whole second layer of analysis with respect to remedy.

Are you arguing remedy for us today or will your colleagues be addressing that?

MR. GERSCH: I can address it briefly, but I know the Executive Branch --

FEMALE JUSTICE: I'm not asking for anybody to be redundant. I just wanted to make sure before you sat down that if that was part of your argument, you had an opportunity to address it.

MR. GERSCH: Our request of the remedy is that the case be -- the map be declared unconstitutional, that the legislature should be given two weeks to come up with another map subject obviously to the governor's

review. It was also our suggestion, but obviously this is for the convenience of the Court, that the Court employ a master now in the event that the legislature is unable to come up with a map.

I know that since we filed our brief, our moving brief, in which we set out this procedure, the North Carolina Court last week adopted the exact same procedure that we're recommending here.

FEMALE JUSTICE: In all fairness to all sides here, isn't that a mighty extraordinary remedy to ask this to be done in two weeks?

MR. GERSCH: The map can be done in a day. I understand the political difficulties. As I said, the North Carolina Court has recommended the exact same thing.

I don't know that they did it, because they read our brief, but they recommended -- I'm sorry, they didn't recommend, they've ordered the exact same thing.

In districting cases -- in cases such as they have in Texas where the maps go up and down, frequently legislatures are given short time frames. So, yes, it's a serious task,

but, no, we don't believe it's unreasonable.

Let me conclude by saying this: We're asking the Court to rule under Pennsylvania law. Pennsylvania law is unique. The provisions of its Constitution are not the same as the U.S. Constitutions.

This Court has ruled in Papps and later cases that the protections afforded expressive conduct are broader than under the U.S. Constitution. The United States Supreme Court has not come up with a test, and we suggest to this Court that it not wait for the U.S. Supreme Court nor should it try and predict what the U.S. Supreme Court is doing.

We're asking this Court to rule as a matter of Pennsylvania law irrespective of what the U.S. Constitution says.

Finally I'm going to finish with a practical reason. I read in the newspapers where opposing counsel says they will try and seek Supreme Court review of this case. I think this Court and certainly Judge Brobson (ph), the Commonwealth Court, have worked mightily to get this case to a point where it could be resolved promptly.

It would be a shame if that were to be undone by some misapprehension of the U.S. Supreme Court that this case was decided on something other than Pennsylvania law.

MALE JUSTICE: Does it change your (inaudible) if North Carolina's case is stayed today by the Supreme Court of the United States?

MR. GERSCH: No, we're asking this case to be decided on the Pennsylvania law no matter what. Thank you, Your Honor.

CHIEF JUSTICE SAYLOR: Thank you.

Mr. Aronchick (ph), on behalf of Governor Wolf.

MR. ARONCHICK: May it please the Court, Mark Aronchick for the executive defendants.

We had divided the arguments here where Mr. Gersch was going to address the merits and I was going to address remedy issues.

Unless the Court has some questions, that's what I will try to do. But let me say right at the outset, I know that I've been asked to keep my comments brief and I will try to do so, and a lot of you are familiar with my sometimes failure to do so, but I

will try.

Should this Court find the map unconstitutional, which we urge, the executive defendants urge, and we urge it for the fallback position that Mr. Gersch presented, the position that Justice Donohue was developing in her -- in her argument.

You are being told that there is nothing you can do to remedy that, that it's just too late. The interveners and the legislative defendants have filed collectively about 20 or 30 pages of briefing trying to raise all matter of chaos and unfairness and impossibility from ordering a new map this close to the election.

We think those points are mischaracterizations and they're flat wrong. I am now going to spend some time taking the two main questions that would then come up; one would be Justice Todd's question, is this -- can we get a map done in the time that's involved, can a map get done and get done properly, that's question one --

FEMALE JUSTICE: Properly is the big part of that. Can something be done, yes,

but we -- haste make waste. We want to make sure that if we were to order that, we're not ordering the impossible or something that would just end up being more difficult down the road faced with challenges.

MR. ARONCHICK: I understand that and I will address at least our views on that, can it be done, can it be done properly.

Then the second basket of remedy issues is once it's done, can the election proceed smoothly for the congressional primaries, let's say for the May 15th primary, assuming this Court wouldn't be entertaining moving, which is a possibility, all of the primaries in order to get things done right.

FEMALE JUSTICE: I thought the Executive Branch was recommending that as a possibility?

MR. ARONCHICK: There are two possibilities. We're recommending that if the map is in place by February 20 or before, that we can show you that we can run this election. We can run the congressional portion of the primary and all the up-and-down ballot seats by May 15th, and I

will show you that and I'll answer any questions.

But if it can't be done and the map be put in place by February 20, we are saying that you have the ample power, complete power, to order moving the primary. In fact, you can move the primary as late as the end of July if you wanted to and still run -- and we can til run the general election in the proper fashion as long as the primary was completed then.

We would be recommending that you in that case move the complete primary rather than bifurcating, run it all together, whatever the new date is, if it's in June or a few weeks later a month later, or whatever you choose --

FEMALE JUSTICE: Well, the cost of having separate primaries would be astronomical.

MR. ARONCHICK: Well, it's not astronomical. It's $20 million shared both at the state and county levels.

JUSTICE WECHT: Why would they have to be separate? Number one, why would there

have to be any separate primaries, why couldn't we just move all the primaries?

MR. ARONCHICK: That's what we --

JUSTICE WECHT: And by the way, why can't they move to August if necessary?

MR. ARONCHICK: Well, Justice Wecht, if you start to move it into August, we run into the military ballot problems and mailing for the general election.

We've submitted an affidavit and -- uncontested by the way, from Mr. Marks in the record that demonstrates why the end of July would be --

JUSTICE WECHT: There are states that have primaries in August. I think there's a state or two that have primaries in September, I could be wrong. I'm just exploring the outer bounds here, assuming other dates -- reporting and other dates the secretary states. The police can also be moved back.

MR. ARONCHICK: Let me recommend this to you, Justice Wecht, that if it became necessary to think about August, we'll go back to the drawing board and figure out if

we can get this all done if the primary was the beginning of August.

When we looked at this and looked at it carefully, we thought the end of July we know we can do that. If you say you need us to go back and sharpen our pencils up a little bit more, I guarantee you we'll do this.

Because one pledge that we're making here is that the experts that know how to run these elections, not the people throwing darts but the one who know how to run these elections, will do everything possible to accommodate an order directing that we finally have a constitutional map that voters, if there was ever a time in our democracy, could vote on --

MALE JUSTICE: In fact, your position -- I'm sorry, Mr. Aronchick, just to follow up. Your position would be in fact that there are constitutional maps that have already been done in profusion here in the form of the experts that Judge Brobson saw.

MR. ARONCHICK: So let me go to the first basket of --

FEMALE JUSTICE: Excuse me, before you

switch gears, could I just throw in a quick question?

MR. ARONCHICK: Absolutely.

FEMALE JUSTICE: Given the breath of the remedy that you're seeking before this Court, is it any concern to the Court the fact that these maps were drawn up in 2011 and that there has been three congressional elections held since the institution of these maps and now this suit was brought in 2017?

MR. ARONCHICK: I don't think it should be any concern. In fact I think it should be frankly for the ruling, sort of a solace, a comfort in that you know for sure that you have adorably unconstitutional map. Then in three elections, there's evidence now, it's not a prediction, it's a fact that 13 to 5, 13 to 5, and 13 to 5, no matter what's happening with all the other elections on the ballots.

So durability, if that's part of your test, you don't have to rely on expert predictions, which other courts do. You can rely on those, because they were clear in this record. You can also rely on the fact.

If you know that as a court in Pennsylvania under our Constitution, if you know that, I suggest respectfully that to close your eyes and allow yet another unconstitutional election to occur, we should be doing everything possible, everything possible, to avoid that. So to get to the issue of --

FEMALE JUSTICE: I'm sorry, Mr. Aronchick, one more thing before you get to your main issue. Could we just put to bed the outlier so that we're all clear.

The special election for the Tim Murphy seat in the 18th is not a part of this argument at all, that special election would occur regardless of what we decide?

MR. ARONCHICK: Yes, I want to put that aside completely. I'll explain for the rest -- but that would be my basket too, can we run the election, would it be chaotic.

This is a complete -- my opponents say it will produce unfathomable chaos, because we have a special election if we also have a new map. I'm -- it's unfathomable to me what they're even talking about to tell you the

truth. The election, there already are two candidates. They're clear -- and a minor candidate, they're clear, so we're not -- there's no petitions.

FEMALE JUSTICE: ...district that was already represented?

MR. ARONCHICK: It's in the current district. It's nine-and-a-half months left for a current seat. It's two months before the May 15th primary.

If those candidates want to also run for a new term in a new district next time, they have as much right to petition and file and run as any other citizen does.

So this notion of chaos, it was what they used to try to bring this case up to the U.S. Supreme Court a couple months ago and slowed the process down at the Commonwealth Court and now they're using it again, and it's weird.

CHIEF JUSTICE SAYLOR: Mr. Aronchick, on this issue of remedy, and we understand the election calendar can be, you know --

MR. ARONCHICK: You do it all the time.

CHIEF JUSTICE SAYLOR: So we have that

point loud and clear. But part of the remedy is to send this back and ask the legislature to redraw the congressional maps without any political consideration.

Now, that -- how hard would that remedy ever work? You're asking a legislative body to draw congressional maps with no notions of political -- and I don't understand the semantic difference between partisanship and politics. It's quintessentially political.

But your remedy would ask that they be directed to draw maps with no political considerations, Democrat or Republican; is that correct?

MR. ARONCHICK: Mr. Chief Justice, no. I said at the beginning that while I wasn't --

CHIEF JUSTICE SAYLOR: ...you said.

MR. ARONCHICK: -- while I wasn't addressing the merits, that I -- our position as the executive defendants is what they call their fallback position, which is when you have traditional criteria which were recognized in Mellow subordinated -- and here it's egregious. No one is doubting that

there was complete subordination. When there was subordination to that extent, that partisanship overwhelms every other factor.

In my view, will there be places where partisanship has perhaps a role on the edges. Your Honor, Justice Donohue suggested one possibility. There are many other kinds of possibilities.

When you're looking at whether we're going to divide a municipality or divide a county in some fashion, when you're looking at true -- to the extent that you factor in true incumbency protection, not make believe incumbency protection, that happened in 2011 when there were four or five, I think it was five, freshmen one year -- not even one year, ten months in place, Congressmen, that were all protected, seniority protected.

Seniority means do you have -- do you have props in Washington, are you running a committee, are you in the leadership. It doesn't mean seniority creation, which is what they did in that map. They were creating ten years of seniority for a bunch of freshmen.

So in an incumbency world, it might be that you look a little bit at where does the person live, what is the voting districts. I'm not saying that we're talking about a completely a partisan system, but where you can start at this Court is just like you do in every constitutional case when you put down a constitutional provision, buffer zones for abortion clinics, time place and manner restrictions under the First Amendment.

There are so many where you start and say, this is wrong, this is a standard under our Constitution that does not work, we're not going to accept it, it violates viewpoint discrimination, it violates any notions that we have of fairness and fair elections, and then you see what evolves in the world of litigation in determining how you refine that standard.

All of these tests, Justice Baer, that you recommended, those are evidence, evidentiary points. They all coalesce here in one conclusion. Every test you look at, ends in the same place that this produced four, five, or six more Republican seats than

any kind of fair process would have produced.

MALE JUSTICE: But under that theory, supposing the Court would adopt your remedy, strike this map, order the legislature to come up with another one, approve it, you wouldn't know if that's was any good until you held some elections?

MR. ARONCHICK: No, no.

MALE JUSTICE: That's what you just said.

MR. ARONCHICK: No, I did not say that. I said that knowing whether you have elections or not helps evaluate the map, but Courts have said on a regular basis that experts who are highly refined can look at the data and the maps and predict outcomes and four or five different perspectives on it --

MALE JUSTICE: Counsel, also if I could just follow up. You've been asked here to hypothesize very close cases. According to Judge Brobson's finding of fact, we don't have a close case; isn't that right?

MR. ARONCHICK: It's not even remotely close --

MALE JUSTICE: So we need to decide this case and articulate those principals that govern this case. And as your brief explains future cases will hash out refining of standards --

MR. ARONCHICK: Completely.

THE COURT: -- isn't that right?

MR. ARONCHICK: Totally right. If you take -- if you decide we're going take this up to February 20 because we want to see if we can do the primary on May 15th, the congressional primary, that is around a month, depending upon when you rule --

But presumably since everything has been handled on a very expedited fashion, perhaps you will rule in an expedited fashion and use that month.

-- if you apply -- if you appoint a distinguished special master, that person, he or she, has available the best experts as consulting experts, the best, and we know from the record in this case that maps can be produced hundreds and hundreds of them in a day.

All the part -- all the voter

information, the population information, all the voter information, all that data is available.

MALE JUSTICE: They have been produced. They have in fact been produced.

MR. ARONCHICK: In fact they were in this record. All of the -- but if the master was then saying, here's what I'm going to do, I'm going to look at all the data that is available -- it's completely available to everybody. I'm going to look at map hardware, available, completely available -- the political science professors tell you that in the amicus brief, Krofman and Ghadi, the other professors, tell you that in their amicus brief.

They're not disputing that, nobody can, because in a more primitive way, that's what they did in 2011. They had map creation, they had data, they put it together. Now it's even better, it's even better as Justice Cappy (ph) predicted in Urfer, as Justice Kennedy predicted and Vieth (ph), it's even better. It's high refined computer information data availability and experts.

FEMALE JUSTICE: Mr. Aronchick, may I just follow up. This is somewhat responding to -- or asking you to respond, because of the Chief Justice' question. The maps that were produced by Dr. Chen, 500 of them, that did not take into account incumbency, because that would be not fair in this case. Because incumbents as we currently sit, we're elected based upon potentially your argument is an unconstitutional map.

But 500 maps were produced by Dr. Chen. There is a partisan choice that could be made if legislature decided just to use those maps, because some of them resulted in ten Republican districts, others nine, some 11, now that's a partisan choice.

So those maps which were drawn based upon traditional redistricting criteria, resulted in a situation where in a partisan fashion a map that resulted in more Republican districts could be chosen over one that resulted in an equal number of Democratic and Republican districts?

MR. ARONCHICK: Absolutely. When I got to that point, I was going to exactly suggest

that, that you're not starting from scratch, you're starting from a record, a record that you asked to be developed that was developed that was not even rebutted.

And the special master could work in parallel to having the General Assembly try to do a remedial plan. You could give the General Assembly a period of time to try to do a remedial plan. Courts have done that.

Yes, the North Carolina case was perhaps taken or stayed but the remedy part of it is instructive for this Court to look at, not the merits part, the remedy part. And if this General Assembly produces a compliant plan, our governor will sign it immediately. If they produce a noncompliant plan, what you have different in this case than you had in 2011 is you don't have that red flag of gerrymandering, one-party control, have you a governor who will not sign it and who will give the reasons, as he's supposed under the Constitution, for not doing that.

Meanwhile, you could have a special master that is develop -- is taking input. There's six experts on both sides that

testified below. There's several more in the Aiger case in the federal court who just recently all studied this map.

There's 40 pages of findings by the Aiger court Justice Baylson, Judge Baylson rather, in his findings that while the Court split in where they were going to go, there are findings that a special master could take a look at. There are all sorts of things that could be done very rapidly where if there's a will, there's a way.

MALE JUSTICE: In fact with respect --

JUSTICE BAER: Can I ask you, we can't shoot at a moving target. It's hard enough to hit a still target. So Mr. Marks' affidavit said to have a July 31st primary, you need a map by April 1st.

As I gain this out day after day -- and you have to recall, we have internal processes. Even if we issue an order, we circulate it among ourselves. There may be a dissenting statement, that might cause a concurrent statement, that may cause a revision, so we can't necessarily get something out tomorrow, just internally.

Then of course there's motions for reconsideration, there's appeals to the U.S. Supreme Court or a Federal District Court, there's stays, there's this, there's that, the other.

So as I gain that out, I have doubts that we can do this by April 1st. I take your clients at their word, which you need a map by April 1st.

So you -- but you had said earlier, well, we don't need a map by April 1st, you tell us when you can get a map and we'll figure out how to do this.

MR. ARONCHICK: No, what I said was actually what the Marks' affidavit says, early April. And it didn't pick a date, it picked a target, early April if we're going to have a July 31st primary without alterations to the weeks that are set up in the statutory primary calendar.

But you could -- if you said -- if you said that it was more important to take a little more time to resolve all these internal issues that you raised, Justice Baer, you also could say that instead

of three weeks of circulating for petition signatures, we're going to -- we're going to order two; instead of X amount of time for objections, we're going to shorten it. You can do all sorts of things in your power. You have done them in election after election after election. There's nothing different about doing this.

All of the questions that you raised, Justice Baer, I view respectfully in the way I look at this case in the category of issues that can be managed, but what can't be managed is looking the other way at this unconstitutional map and then saying at this point in time, Pennsylvania, which has become a national joke, a cartoon, Goofy kicking Donald, we're a cartoon in the country when we were the pride of the country with our Constitution.

You can't say, let it go again, because we haven't figured out how to manage these various issues. In the Mellow case --

FEMALE JUSTICE: I need to -- I need to interrupt you, because we can say things that are not -- we're just not going to deal with

it. We could theoretically agree with your constitutional arguments and we could decide that a remedy that puts the state into a tailspin and rearranges the entire election calendar and gives the legislature two or three weeks to do this task is unweldy.

We could say that. We could say the map is unconstitutional and that we are going to require it to be fixed well in advance of the 2020 election. We could do that and I'd like to you address that.

MR. ARONCHICK: Sure you could, but this Court faced that question in Mellow at a later stage in the primary election calendar and chose not to do that and fashioned an appropriate remedy that everyone bought into in Mellow. In Holt this Court --

FEMALE JUSTICE: ...portion of the cases.

MR. ARONCHICK: I understand. In Holt, this Court did the same -- my colleague wants me to make one correction as soon as I finish answering your question.

Here's what I've been trying to say: You can devise a special master process that

can work rapidly and you can monitor that, you can ask the General Assembly if they want to do a remedial plan and if they do, fine.

If you want to operate within this primary, we are saying February 20 or so is about the right target to get the map and we will then give you very minor, very minor, requests for adjustments to the certain deadlines in the statute that you have ordered in the past all the time.

And that wouldn't be chaos if the special master in your estimation would be ready with a recommendation and a remedy for you if the General Assembly was noncompliant.

MALE JUSTICE: Mr. Aronchick, the argument -- the argument's always going to be made, well, it's too late to grant relief. That argument was made in front of Judge Pellegrini, wasn't it?

MR. ARONCHICK: It was made in front of Judge Pellegrini --

MALE JUSTICE: He rejected that.

MR. ARONCHICK: It's made in every single solitary election case, whether you're talking about redistricting or striking

ballots.

MALE JUSTICE: One more thing -- one more thing on timing that I was trying to ask before, isn't it true -- is it an upshot of the expert work here that it's far less time consuming to draw a map that's compact, contiguous, and respects subdivision lines than it is to scientifically craft an extreme partisan gerrymander, which slices and dices districts and precincts?

MR. ARONCHICK: That's a perfect statement. Dr. Chen demonstrated that. I want to make one correction while I'm talking about that and Dr. Chen is that in his 500 simulations, there were not -- there were none that produced 11 Republican seats. There was a small number at 10, but yes.

We are way past the day with our technology and our experts to really have to be even be stumped by that question. You put that information, in a day you're going to have 500 choices or two days, you're going to have a lot of choices.

You then present them to all the stakeholders, let them react, let them write

in their objections, their qualifications as was done in Mellow with then chief judge -- or President Judge Craig who acted as a special master in that case.

He got all the objections, he got everything -- then produced a report for the Supreme Court. Everything happened very -- this was at a time of primitive technology and we were talking about voter registration as a measure, which nobody talks about anymore, because it's -- the partisan -- the data analytics are so much more refined.

JUSTICE BAER: Mr. Aronchick, may I ask you, in 2011 of course we had Republican legislature and Republican governor. In looking at the jurisprudence in the area, one of the elements for this case, it's been suggested, is one-party government. We now have a Democratic Governor.

So if we get -- if we give the legislature an opportunity and the legislature passes a (inaudible) and the governor signs it, does the fact that we have natural antagonism between the Democratic governor and Republican legislature end the

case?

If it's okay to both sides, it's no longer -- it should no longer -- I wouldn't say it's not judicable but it no longer meets the elements of an overwhelmingly gerrymander ship.

MR. ARONCHICK: Justice Baer, I think -- let me answer it like this, let me answer it like this: I think that there will be a very compelling position that if the legislature produces a compliant map, the governor believes it's compliant and the governor signs it, that we have a map that we can go through.

But I can't eliminate the fact that when you present that, would there be objectors that want to be heard, maybe, but I think that it would be a compelling case.

Because in this jurisprudence as the Brennan Center said -- these amicus briefs by the way, I hope that you've had a chance to study them. They're amazingly good. They hit so many points. They were only filed on one side of the case. I don't know that anybody believes them as much on the other

side of the case, because there are none.

But you will see that the badges of gerrymander, one-party control, previous competitive elections that suddenly are noncompetitive at all, the protection of people who are barely incumbents, they're puppies in the process and now they're being called incumbent seniority that needs to be protected. I mean, please.

You can see these kinds of excuses -- the fact that, as in this case, our opponent -- the opponents, legislative defendants, produced no explanation whatsoever for this map, not one compelling governmental interest explanation other than we get to do and you don't get to review it.

JUSTICE TODD: You're going back again -- pardon me, you're going back again to the constitutional arguments when I thought we were focused on remedy.

One of the things that I don't want to see happen, as amenable as I am to your argument, is that we just assume that we are now in a world of such high technology that minds and hearts and reason and the role of

the legislature and the role of the courts and order -- an orderly process gets set aside, simply because we have the technology to make it happen.

The legislature is not a computer and we are not robots. There still are considerations of thought and time and mindfulness that need to go into a remedy should we find for you on the constitutionality.

MR. ARONCHICK: Justice Todd, I couldn't agree with you more. But I'm suggesting that because there is technology and highly refined minds on this subject, that you can have a period of thoughtfulness, you can listen to objections or ideas that are being made about a map and decide whether they make sense. This is an area that's been highly studied. This is not a brand-new area.

And you can have that period of time if this Court puts together the kind of remedy that the petitioners have been proposing and recognizes that the governor will have a role in this. No question, the governor will have a role in this.

CHIEF JUSTICE SAYLOR: Mr. Aronchick, I think Justice Dougherty had a question, then we're going to move on to Attorney Levine.

MR. ARONCHICK: Chief Justice, I just want to make sure I'm answering. I've been moved around --

CHIEF JUSTICE SAYLOR: We understand your point.

JUSTICE DOUGHERTY: That's exactly my point. My point is you as petitioner, you're here to tell us what your remedy is, you've given us the options that we're familiar with, but I'm asking you: What is it that you believe is the remedy that we should consider, what is it, your party's position?

MR. ARONCHICK: The executive defendant's position is that you should engage a highly respected -- or appoint a highly respected special master. You -- I'm not going to suggest who that is.

That master would have available a consulting expert. There are many in this area. That master would start a parallel process, meaning taking information that's already available with the idea of producing

a report and recommendation for you.

If at the same time, the second part of the remedy is, the General Assembly in a defined period of time, two or three weeks, whatever you choose --

JUSTICE DOUGHERTY: I'm asking you what you think we should -- we can make our own decision. I'm asking you as the party. Be specific. You're the petitioner asking us for remedy, could you give it to me?

MR. ARONCHICK: I think you can give the General Assembly three weeks, three weeks. Two weeks, yes; three weeks, we go either way on that. To be truthful, we will go either way.

It all depends on how fast you move and whether you want to try to meet the February 20 deadline. The General Assembly can act in either period of time. They can do it. They did it here.

JUSTICE DOUGHERTY: Taking into consideration the military's absentee --

MR. ARONCHICK: Then let me go -- let me go forward, because that gets to the second part that I really didn't -- that I really

didn't address.

If on February 20 there's a map in place and you want -- and we're aiming -- we're meeting the May 15th primary, the critical date that the department needs to work around or work with is the March 26th and 30th military ballot mailings, overseas and military ballot mailings.

So that means from February 20 to basically March 26th or so, there's about six weeks -- there's actually about five weeks. The department would want two of those weeks to input all the data into the computers, produce all the information that everybody needs, advertise the new districts, give all the voter rolls out to anybody who wants to run so they can get organized for their petitions, tell them what precincts are in which districts, that would take about two weeks.

If you said, do it faster, we'll put more people on and do it faster. But we're telling you what would normally be three weeks, we can do in two. If you say do it in one and a half, we'll do it in one and a

half.

Then you have only three activities that occur before the military ballots are mailed -- petition circulating, filing of objections, withdrawal of candidates. The Election Code provides six weeks for that period of time. We can give you simple amendments that would have those activities occur in three weeks. There is all sorts of accommodations you can make as a Court to enable that to happen, which we will provide to you, if that's what you want, so they're in your order and the elections will run as fairly and smoothly as they possibly can.

One last point that's important. All the other elections will go on the normal calendar. What you do with regard to the congressional primary will not have any effect on the up-and-down ballot elections on the -- aiming at the May 15th primary.

MALE JUSTICE: Wait a minute, I'm sorry, I didn't understand that to be -- let me clarify. We could just move all the dates back and save the Commonwealth any substantial-added cost.

FEMALE JUSTICE: $200 million.

MALE JUSTICE: I mean, there's nothing holy -- is there something holy about May 8 or May 7, or May 15?

MR. ARONCHICK: No, no, no. If you decide -- you asked in connection with that remedy. The second proposal that we make to you is just that, you can change the primary date. We're early in the country, as you said. You can change the primary date for all races. You can change it we believe safely, not a problem, until July 31 call it.

If you say go back, I'm telling you, Justice Wecht, and figure out whether there's more time into August, we will sit down and come back to you and tell you that with an addendum to our affidavit.

MALE JUSTICE: There must be, because I know for a fact Connecticut votes in August. I think New York is later.

MR. ARONCHICK: I understand that. Nobody below asked us to do that, so there was no contest in what we put into the record.

So if you, of course, the Supreme Court,

asks us to pull out the pencils and take a second look at that, we will certainly do that rapidly. We'll comply, we'll submit our report to you rapidly.

MALE JUSTICE: Thank you.

MR. ARONCHICK: Thank you very much. One last comment, please, just to wrap up and that is what I said before, I really mean. We were the pride of the country with our Constitution. We're not now with the way we're running this part of our democracy. Please in as broad based as possible, as steadfastly as possible, please correct that. Thank you.

CHIEF JUSTICE SAYLOR: Mr. Levine on behalf of the respondent lieutenant governor, what's the different interests between the governor and the lieutenant governor?

MR. LEVINE: Well, the lieutenant governor actually has the role both with the Senate and the Executive Branch. The lieutenant governor has felt that it's important also to have a special master involved in this process as a remedy for that reason. The lieutenant governor has

advocated the use of a particular map associated with this.

To follow up on Justice Wecht's question, Dr. Chen offered many maps that were done under the traditional criteria. The one map that we included in the brief, which was highlighted as Chen Figure 1, that was a map that actually not only was designed under the traditional criteria, but actually addressed every single community of interest issue.

So when you look at that map Erie is not split, Harrisburg is not split, Berks is not split with Reading coming out. In other words, Montgomery County doesn't have five splits. That was a map that through traditional criteria addressed every legitimate issue, and that goes to the question that Justice Donohue asked about this partisan political distinction.

Absolutely, Delaware County for instance has 500,000 people. A congressional district is 705,000 people. It is within a reasonable basis to go either east or west or north and you could support that.

What did not happen here, and this is the critical distinction, that's why this case is really not all that complicated for all the discussion.

There's a freedom of expression challenge here. It is incumbent upon the government to show the compelling state interest. There was no evidence to support that.

The traditional criteria, which were enunciated by this Court in Holt, based on Reynolds versus Sims and historically going way back before then, the traditional criteria could be used to justify.

So if there was a witness, which there was not, that witness would hold up a map and say in Delaware County we had a compact district. We could have gone to Chester County or we could have gone to Philadelphia or Montgomery County, there might have been different options, but this is how we legitimize that decision.

And over and over again in having this map, there is no defensible explanation for why you have these bizarrely shaped

districts.

CHIEF JUSTICE SAYLOR: Mr. Levine, let me try again. I know the lieutenant governor's sued in his legislative and executive capacity, but in terms of result or remedy, where do the governor and lieutenant governor differ?

MR. LEVINE: We're generally the same. The only thing that I think -- generally speaking, Your Honor.

CHIEF JUSTICE SAYLOR: I'd really like to know. Is the lieutenant governor's position different than the governor's on remedy?

MR. LEVINE: It's generally the same. The only difference I would offer is that we could have a situation where the legislature is given the two weeks or so to develop a map, and the legislators have indicated that they don't really want to change the map.

So as a practical situation, the legislators might come up and say we've just combined Erie, isn't this a nice new map, that's only change we made.

So I think it's imperative to ensure the

constitutionality of the map that there's a special master that is proceeding contemporaneously. I think we don't have to reinvent the wheel, because of all of the extensive evidence that we had, and the map we included in our brief, it addresses every single issue of communities of interest.

The other thing that it does wonderfully in our short time frame, it really essentially avoids all issues of incumbency. We have a unique situation this year. We have a number of Congressmen who are not running for reelection who have announced they have resigned and this map actually addresses virtually every one of those Congressmen.

I would direct the Court's attention to Stack Exhibit 9 where we actually pinpoint on this map where the incumbent reside. It actually addresses the special election, both Conor Lamb, Rick Saccone, where the candidates in that special election would reside in the new Tim Murphy district -- what was Tim Murphy's district there.

I think there is are one or two

situations that people are on the border and a special master can resolve that. But the question is: What's our remedy and what's our result in contrast to the perpetuation of an unconstitutional map.

There's an old -- there's an old joke about a guy who goes to a tailor and he takes his beautiful suit in and gets it measured and he fits the tailor and he finds out his sleeve is up to here and one is down here, and the tailor said if you stand like this, it fits perfectly.

That's where we are now. We have a state that is in a contorted, twisted way, and we've stood that way for three elections now, producing the result 13 to 5 even where more Democrats have voted for congressional Democratic candidates statewide than Republican, 13 to 5, no matter what happens.

It's twisted, it was distorted. They will make this argument that we haven't identified a class, we don't know who these people are. This map was specifically designed by looking election district by election district at voting preferences.

They looked at those voting preferences and then they determined a way to split those voters so that they would not have a voice. That is a classic freedom of expression case. The test is not that hard. They had to come up with a compelling state interest, they came up with no state interest. They came up with no justification in a five-day trial, nothing.

There's not -- nobody got up there -- and again this Court knows, I do a lot of land use cases. There's discretion that's often given in zoning maps. There's a lot of latitude in terms of where you put a commercial district or not, but you've got to come forward and justify that. In so many areas of the law, you've got to come forward and justify that.

Here we have the highest standard of review, a strict scrutiny review, they didn't do it, they didn't come up with anything, and we shouldn't have to stand in this twisted, contorted way for an election where so much is at stake in our country and the voice of so many people should be heard.

MALE JUSTICE: (Inaudible).

MALE JUSTICE: In your brief and in your argument, you have been stressing Article 7 --

MR. LEVINE: Yes.

MALE JUSTICE: -- I should say Section 7 as well as Section 26. You also cite Section 5, the free and equal election. Why don't you address that, because Mr. Gersch did not. Why don't you address despite the fact that that is part of the substance of your argument for us to consider, that Constitution.

MR. LEVINE: Yes, and I think that is a unique aspect of the Pennsylvania Constitution and in consort with the freedom of expression and equal protection, free and equal election.

So what does that mean? A great example of that would be if you -- we have an Election Code and if there's a tie vote, there's a tie vote, we draw lots, that just happened in Virginia in fact, and we draw lots.

Democrat would pick a lot, a Republican,

50/50 chance. If the General Assembly were to pass a law that said the Republican would actually get two chances. If they don't win at first, they get to do it again. That would be outrageous, because you're changing the odds from 50 percent to 75 percent. It would be an Election Code and the free and fair elections, that would just so violate that.

Here we've taken a map that really should be basically a 50/50 delegation and we've changed that to 75/25 percent delegation and we've done it through the same heavy hand of government tipping the scale of that election playing field.

We are not looking for proportionality, we are not looking for special favors, we are looking for an equal level playing field, which can be done by offering a design based on the traditional criteria.

I think that that section that you reference actually elevates us and clearly distinguishes us from a federal situation.

MALE JUSTICE: May I ask you, actually I have two questions, but first to the remedy.

If the -- I ask the question of Mr. Aronchick.

Given that we have -- we do not have one-party government, if we remand this or we direct this to the legislature, which I think is the proper thing to do, and the legislature puts together a plan that the governor signs to make it an acting statute, does that conclude the case because the natural political forces have aligned with tension to create a map that just has to be deemed constitutional, can't be overwhelmingly partisan, because the governor is the guardian of other side, if you will?

MR. ARONCHICK: Well, it certainly changes equation. Obviously this Court has ruled a number of laws to be unconstitutional. These were laws that were signed by legislatures and governors.

FEMALE JUSTICE: We cannot presume, sir, that nobody in the Commonwealth is going to disagree with the governor, because they're Democrats?

MR. LEVINE: Right, there could be that change, but I think this is -- so there's a

greater likelihood that you're going to have a fair map.

My concern is with the General Assembly, to be blunt politically, they do not want to change the map. They're not going to come in with Chen Figure 1 and they're going to come in with probably something less, and that would be my supposition.

Now, if we get to the final day of our period, what do you do, what does the governor do, it becomes a difficult equation.

I think it would be very, very helpful for the process if this Court said here's a special master who's going to proceed. The General Assembly certainly has every right to go we're going to go two weeks or so and we're welcoming that map, we're welcoming that involvement, but we have for instance a map Chen Figure 1. We have that map that will offer balanced communities of interest that actually offers a fairly balanced result and most importantly, it follows all the traditional criteria.

We're going to have that interest and I think actually that will elevate the

conversation knowing, the General Assembly knowing, that this Court also has a special master track. It will elevate the conversation and vastly increase the chances that we're actually going to have a meaningful map come out of the General Assembly that the governor could sign.

If not, we've wasted no time. In two weeks this Court can accept that map of the special master.

Again, I go back to the situation, this has been for three consecutive terms, but as Mr. Aronchick said, no matter what happens, it's a 13-5 vote. It is amongst the worst ever a partisan gerrymandering and I think this Court has an opportunity to say, no, you've identified Democratic voters. It's not necessarily dependent on your voter registration. It's election-district-by-election-district analysis, which is exactly what they have done and where -- and all of our experts have done.

For that reason, we respectfully urge the Court to take the opportunity so that our

voices can be heard bluntly. Thank you.

CHIEF JUSTICE SAYLOR: I think we'll turn to the respondents now and hear first I believe from Torchinsky -- Attorney Torchinsky representing the President Pro Tem of the Senate.

MR. TORCHINSKY: Thank you, Your Honor. May it please the Court, I'm Jason Torchinsky. I'm actually representing Speaker Turzai and Senator Scarnati.

Presenting for respondents today will be myself, Mr. Mark Braden representing Speaker Turzai, and Mr. Tabas representing the interveners.

I'd like to make some brief opening remarks, go through a couple of the factual questions, and then address the equal protection claims, and the Article 1, Section 4 arguments.

Mr. Braden is going to address free inspection claims and our remedies position, and then Mr. Tabas would like about five minutes for his argument.

FEMALE JUSTICE: Don't rush. Take your time.

MR. TORCHINSKY: Thank you, Your Honor.

History in Pennsylvania seems to repeat itself. Here we are again after three election cycles held under the current map with the parties bringing a claim challenging a congressional districting map to pass through the legislature with bipartisan support.

And once again the petitioners assert that there is a near certainty that the Democratic Party will hold only five seats under this redistricting map. Once again they're claiming the map is an unconstitutional gerrymander.

Once again we're in a situation where the Democratic Party is robustly challenging several congressional districts in the Commonwealth in 2018.

Once again history repeats itself and doom and gloom predictions by challengers, and a partisan gerrymandering case allege their party may never well succeed, may well get proven wrong again.

Going back to the 1990s, plaintiffs in a North Carolina partisan gerrymandering case

claimed they could never win. Five days after the decision affording relief, the only case that the U.S. Supreme Court cited in Vieth that provided relief under Bandimere, the opposite party -- the party of the plaintiffs in that case prevailed in the elections prompting remand from the Fourth Circuit.

In Bandimere, the plaintiffs insisted that the map was so durable that their party could never prevail in the State House, and they proved wrong the next election when the Democrats tied the Indiana State House and under the same map, two cycles later, took over majority.

In Urfer and in Vieth, plaintiffs came before this Court and the U.S. Supreme Court insisting that their party could never take a majority of the congressional seats under the current map.

MALE JUSTICE: But, Counsel, we've had three elections under the current map. We have the identical Democrat and Republican, the identical congressional caucus that we had in 2011.

How long do we have to elect the same people again and again. Obviously Representative Murphy has retired, but with that exception, how long before you get to durability?

MR. TORCHINSKY: Your Honor, I guess if I could just finish my thought, in 2006 and 2008, five congressional seats flipped the other way. And for two cycles in a row, Democrats controlled the congressional delegation with 12 seats of the 19, and that was under the map that they came before this Court and said we could never take control, because it's such a crazy partisan gerrymander.

So my point is, it doesn't take very long before social science runs into actual voters who defy social science. It's not like combining an oxygen and a hydrogen molecule where you know exactly at what temperature it's going to change from water to water vapor or to ice. Voters vote differently in every election. And social science can make predictions, but social scientist predictions are often wrong about

voters. Because that's the thing, voters don't follow scientific rules and that's --

MALE JUSTICE: Do you want us to upend Judge Brobson's findings of fact with respect to intent and effect, two prongs of the Urfer test?

MR. TORCHINSKY: Well, I don't think that Judge Brobson --

MALE JUSTICE: You seem to be contradicting his findings of fact with respect to the intent and the effect of this gerrymander.

MR. TORCHINSKY: I don't think that we are taking issue with many of Judge Brobson's factual findings. I think our arguments really go to the legal point.

I'd like to address a couple of the factual questions that the Court raised. First of all in 2011 with respect to voter registration in the districts as they were enacted, there were seven districts that had majority Democrat registration, five districts that had plurality Democrat registration, two districts that had majority Republican registration, and four districts

that had plurality Republican registration.

Although there has been a trend towards more Republicans since 2010, I do not have the current statistics about how many of the districts are the same majority plurality stats with the current registration.

MALE JUSTICE: It has some resonance, at least with me, that the voter registration's irrelevant, that people register in college or shortly thereafter, and then people change.

So if you want to know how people are voting look at how they voted in the last few elections, not how they registered 30 years or 50 years ago.

MR. TORCHINSKY: Your Honor, that's correct, but I was trying to address the -- I think it was Justice Saylor who had a question about where the registration stood at the time of the map, so I was just trying to address that.

I want to go into a little bit of the expert findings. Dr. Chen did all these simulations and he sort of did these random simulations, and I would focus primarily on

his Set 2.

When you consider what his Set 2 came up with this so-called nonpartisan criteria, or what he deemed was nonpartisan criteria, over 50 percent of his maps paired Congressman Brady with another incumbent member of Congress.

Sometimes it was with Congressman Fattha, sometimes it was with one of the other Congressmen from South Eastern Pennsylvania. But in over 50 percent of his simulations, Congressman Brady, the senior most Democrat in the congressional delegation, who if the Democrats take over majority in the house is very likely to chair the House Appropriations Committee, would be paired with someone else.

It is unrealistic to believe that a political body like a legislature would pair one of the senior most members of Congress from the state with someone else.

So Dr. Chen's maps, while they might have been sort of neutral and nonpartisan, didn't consider political reality at all. Again, I think that that's really important.

When social scientists attack these things, they don't necessarily realize the political reality on the ground. Frankly for this state, Congressman Brady's position as the current ranking member on the Appropriations Committee in the House of Representatives and the likely chairman of the Appropriations Committee if Democrats do take over a majority in the State House is critically important to this state, and so the notion --

MALE JUSTICE: Question on that, see you're asking -- you're framing that as if we were sitting here in a legislative caucus room drawing a district, but we're not.

We're here viewing a challenge to a gerrymander that's alleged to be extreme partisan in nature and violation of our Constitution. We're not here concerned with Congressman X or Congresswoman Y or this particular incumbent or that particular incumbent.

It's our job to assess what your clients have done against our Constitution. So why should we concern ourselves with this

particular member of Congress or that particular member of Congress when we're applying our Constitution?

MR. TORCHINSKY: Sure. Because this Court in Mellow when it laid out what it considered to be traditional districting criteria for Congress -- and, again, we recognize that there is expressed constitutional criteria with respect to state legislatures. In Mellow, this Court said you look at protension of cores of existing districts and avoiding pairing of incumbents, so --

MALE JUSTICE: You could do that -- your clients could have done that --

MR. TORCHINSKY: Yes, and this Court did that in Mellow.

MALE JUSTICE: -- but now -- but now they've done what they've done. Now, it's not our job to protect incumbents, is it, it's that it might have been permissible for your clients to do it, but it's not required of a Court to protect incumbents in the event of a constitutional violation; isn't that correct?

MR. TORCHINSKY: Your Honor, I think I would point out to you that the Supreme Court and federal courts that have ordered remedies have included avoiding pairings of incumbents where possible in their remedy orders.

If you look at Karcher versus Daggett, if you look at this Court's apportionment case in Mellow, if you look at the criteria that North Carolina three-judge court just laid out for the North Carolina state legislature when it appointed its special master, one of its criteria was, and because it is considered a traditional districting criteria, to avoid pairing of incumbents.

MALE JUSTICE: No event would you elevate that to the level of compactness, contiguity, and avoiding dividing subdivisions and municipalities; is that correct?

MR. TORCHINSKY: Well, that depends. I mean, if you're in a state that has expressed criteria with respect to Congress, then yes. But when you're in a state like Pennsylvania where there is nothing express in the Constitution or in the state statutes that

provide an order of criteria, no, there's no legal requirement for that.

I mean, this Court in Mellow did say that contiguity is required by federal law as are single-member districts and equal population, but compactness and avoiding splitting political subdivisions were things that this Court identified in Mellow when this Court identified what criteria it was going to use when adopting --

MALE JUSTICE: Just one more question and then I'll hold back, but just one more question. Are you telling this Court that as a matter of Constitution -- as a matter of Pennsylvania Constitutional law it is as important if Congressman Jones or Congressman Smith or Congressman Brown survives as it is that a district be compact, contiguous, and avoids dividing counties and municipalities except where necessary?

MR. TORCHINSKY: There is no provision to Pennsylvania law that speaks to compactness or avoiding municipality or political subdivision splits with respect to Congress.

If you go back to the formation of the Pennsylvania Constitution, there was -- there was expressed criteria adopted with respect to state legislatures, but that same body that put this into the state Constitution for the state legislative seats, didn't put that same criteria in for congressional seats. If you look nationally --

CHIEF JUSTICE SAYLOR: Could I ask you a question?

MR. TORCHINSKY: Sure.

CHIEF JUSTICE SAYLOR: Maybe I could ask you to -- we don't have a stenographer, but if you could just slow down a little bit, it would be easier to follow.

The legislature has a notwithstanding the lack of any expressed criteria in our state Constitution, in terms of these norms, the legislature is bounded by expressions of the United States Supreme Court in terms of congressional redistricting, is it not?

MR. TORCHINSKY: Zzz yes, what the Supreme Court --

CHIEF JUSTICE SAYLOR: Some of these notions have come through the federal cases?

MR. TORCHINSKY: That's true. And, Your Honor, 2011 map split I believe one or two fewer counties than 2002 map and split about 30 fewer municipalities than the 2002 map. So it's not like traditional districting criteria were totally ignored by the enactment of this map.

MALE JUSTICE: I want to follow up on all the questions. I'm trying to get what your position is. Is it your position respectfully that compactness, contiguousness, lack of splitting municipal county lines or the like, that those are not criteria that this Court should apply in deciding the evidentiary standards to determine if there's overwhelming partisanship or invidious viewpoint discrimination or the like?

MR. TORCHINSKY: Not at all, Your Honor. Again, we looked to what the Court said in Mellow, which is preserving cores of districts, protecting incumbents, respecting compactness, minimizing splits of political subdivisions, and we submit that the 2011 map did split fewer counties than the 2002 map

and did split fewer political subdivisions than the 2002 map.

MALE JUSTICE: You also argue that the districts are compact and contiguous?

MR. TORCHINSKY: When you average the compactness scores across the state, there's actually not too big of a difference in the compactness scores between the 2002 map and 2011 map.

I mean, compactness scores are a mathematical model that generally you average across the state. So when you get to sort of densely populated areas, it's much easier to draw a compact district than if you are in an area that is less densely populated, so that's a challenge for mapmakers.

For example, what Dr. Chen's sort of algorithm did was prioritize those mathematical percentages over any other considerations.

That's how he was able to develop maps that minimize county slits and minimize municipal splits, but sort of didn't consider how to weigh those different factors, because his algorithm just mechanically prioritized

one over another.

MALE JUSTICE: You view the mechanism of a land bridge as sufficing for contiguousness, I found that bothersome.

MR. TORCHINSKY: Your Honor, the Supreme Court has recognized that over and over again -- I mean, I point this Court to Cromartie versus Hunt -- or Cromartie versus Easley, sorry, from the U.S. Supreme Court, where the Supreme Court approved as a partisan gerrymander, as a permissible partisan gerrymander.

The snake-like district that ran from the southern part of North Carolina into like I think it was three different forms or three different little fingers at the top, and the Supreme Court said that's a permissible partisan gerrymander. The Supreme Court had struck down a similar one when it was a racial gerrymander but --

MALE JUSTICE: We do a district that comprises a Democratic portion of the city of Pittsburgh and a Democratic portion of the city of Philadelphia and connect it with a land bridge, which is the Pennsylvania

Turnpike and the Schuylkill (ph), constitutional or at least arguably constitutional?

MR. TORCHINSKY: Your Honor, there's a district that looks almost like that in Cook County, Chicago, that's been challenged in federal court about three times and approved. They call it the barbell district and it literally looks like a barbell where you've got sort of two pockets connected by a land bridge, and the federal courts have approved that. I think there have been at least three cases challenging that map.

FEMALE JUSTICE: But it didn't include the Schuylkill.

MR. TORCHINSKY: Well, Your Honor, I point you to -- actually I was a -- represented a group of African-Americans challenging Maryland's map in 2011 in a case called Fletcher v. Lamone and there are -- there is one district there, Maryland's 3rd District, that is only contiguous in two places by water and the federal court approved it. The federal court said we just really don't have the power to -- to override

this.

MALE JUSTICE: Do those cases get into -- I don't want to just think out loud. Do those cases get into whether it's a judicable question or a political question as opposed to actually saying that these are contiguous?

MR. TORCHINSKY: If you look at the -- if you look at the concurring opinion in Fletcher v. Lamone, the Court said these are judicable, but there are no readily developed or manageable judicial standards recognizing what this -- what the Supreme Court said in Vieth, which again followed this Court in Urfer.

I'd like to turn, if I could, to the equal protection arguments. In Urfer, although it appears that most of the argument from the petitioners focused on the First Amendment.

I think the petitioners have essentially acknowledged that under this Court's test in Urfer, assuming Urfer is still good law following Vieth, that they do not and cannot prevail under Urfer's test.

While they may have -- or at least the Commonwealth Court concluded that there was intentional discrimination, or at least intentional partisanship. The Court did not reach a conclusion about Democrats being an identifiable political group. What they're really asking you to do is treat race and politics the same.

Part of the reason that the Supreme Court, for example, in the voting rights cases has identified minorities as a protectable group is the history of real discrimination and the fact that race can't change.

Political party is not a protected class that has ever been recognized by the U.S. Constitution or under the Equal Protection Clauses of the U.S. Constitution.

MALE JUSTICE: Counsel, on this identifiable class argument you're making, doesn't the durability of what your clients did proven over three elections, producing the exact same fraction in the delegation each time itself give the best proof of the identifiable class?

MR. TORCHINSKY: Except, Your Honor, I would point out that Republican registration in Pennsylvania has been rising and Democratic registration in Pennsylvania has been declining.

So it's not -- and that gets to my point that people are not immutable. If you're a Democrat when you're born, you're not necessarily a Democrat when we die.

We had Arlen Specter switch parties while he was a Senator. We had President Reagan who was a Democrat before he became a Republican. We have Donald Trump as president who's a Republican who used to be a Democrat. Party is not an immutable characteristic like race and they're asking you to conclude that it is.

I also would point you to Justice O'Connor's concurrence in Bandimere where she pointed out that the Democratic and Republican Parties are not helpless. The Democratic and Republican Parties in the United States and in Pennsylvania are in fact very powerful.

They're not a minority -- neither one is

a minority group that needs the Constitutional protection that the Supreme Court has afforded to racial groups.

With turning to the second prong of the Urfer test, which is working disproportionate results at the polls such that there was lack of political power and denial of fair representation, which effectively shuts a political party out of the process.

That's not happened in Pennsylvania. This Court didn't conclude that way in Urfer. Democrats had, at least of the elections that were run under 2011 map, a higher percentage of the seats than they had under the 2002 plan.

And I would point out that several of these districts -- in the 11th -- in the 12th and the 18th District, there's more registered Democrats than Republicans, but they're voting Republican. There are Democratic candidates registered to run in the 7th Congressional District, the one that Mr. Gersch criticized because of its shape. But there's four Democrats that are actively competing for that seat, why, because they

think they can win.

Go to the 12th District there are five -- I'm sorry, the 10th District, there are five Democratic candidates in that district. There's another Democratic candidate that's raised almost a million dollars under the restrictive federal campaign finance law. Why, because these are actually competitive elections.

We have a winner-take-all system, right, it's 50 percent plus one, if there's only two candidates, or a plurality if there's a third party, but these are really -- some of these are actually really competitive seats. I mean, look, we've got a competitive election right now for this special election for Tim Murphy's seat.

I mean, these are not immutable numbers and these numbers can change. In every partisan gerrymandering case that has happened so far, they've changed shortly thereafter even after the Courts upheld the maps.

So I submit to you that the second prong of Urfer hasn't been met. In fact, I think

the petitioners acknowledge in their briefing that they don't believe they can meet the second prong of the Urfer test, because they're asking this Court to abandon it.

They're also asking this Court to abandon 50 years of following the United States Supreme Court on these questions of partisan gerrymandering.

Back in the '60s, this Court followed the U.S. Supreme Court on these cases. Back in to 2002 -- back in Urfer, this Court followed Bandimere, but this Court has never had an opportunity to evaluate Urfer since the Supreme Court's plurality in Vieth rejected the conclusions of Bandimere --

MALE JUSTICE: Would you maintain, Counsel, that they're -- putting the Voting Rights Act cases aside, would you maintain there is no map that would violate Pennsylvania's Constitution, because that seems to be the upshot of your argument? If this map is not in violation of our Constitution, what map would be?

MR. TORCHINSKY: Well, Your Honor, there were -- the 2002 map was upheld in Urfer on a

-- where Democrats had -- where Democrats admitted they had at least five safe seats, and that was 5 of 19. This is 5 of 18, that's a higher percentage.

I mean, if this Court wasn't ready to conclude in 2002 in Urfer that that map violated the Pennsylvania Constitution, this map is arguably better because of the higher percentage.

So is it possible that there is a map that could violate the Urfer test, yes, but it hasn't been found yet. If you look at every court case that has been brought since Bandimere, until 2016 there was not a court that afforded relief.

So far of the courts that have afforded relief, you've got Whitford, which has been stayed by the United States Supreme Court suggesting a likelihood of reversal.

The petitioners in Rucho (ph) have their response due to Justice Kennedy today by noon on the Rucho case. There's just been -- and the Maryland Court after denying summary judgment, denied a preliminary injunction, so there's really --

MALE JUSTICE: If I could just follow up briefly. It seems as a matter of principal and given what you said in response to Justice Baer's question about the Pennsylvania Turnpike District, that there's no principal basis for distinguishing this gerrymander that brings us here today from one that would have three Goofy, Donald Duck districts, or five, or would result in one Democratic Congress person being elected.

In other words, I don't see the principal stopping point between the argument you're making and the argument that there is no such thing as an unconstitutional partisan gerrymander.

MR. TORCHINSKY: Your Honor, I think what I would say is that no court has yet come up with any set or standard. I mean, Judge Brobson pointed that out.

Some politics is clearly permissible in redistricting. Drawing the line between where politics is permissible and impermissible has never been articulated by -- by the petitioners in this case.

Judge Brobson pointed out what are the

unanswered questions that the petitioners not in their arguments in front of him and not in their arguments in front of this Court have answered, for example, what's a constitutionally permissible deficiency gap, how many districts have to be competitive to go to your point to pass constitutional muster?

I mean, the Supreme Court has rejected notions of proportionality and yet your question seems to say, well, isn't some proportionality required.

Until someone -- until a court comes up with a manageable line, that's a really tough thing, which is again why every Court that has looked at these cases since Bandimere --

MALE JUSTICE: The difficulty, Counsel, apropos of Justice Wecht's question, the difficulty is that by that reckoning, candidates and voters are both fungible.

We can take any candidate -- if you're permitted as you suggest to have overwhelming partisanship and you haven't gone so far to say women may not vote or only one party may be on a ballot, which I presume you would

concede as unconstitutional.

MR. TORCHINSKY: Yes, Your Honor.

MALE JUSTICE: So you haven't done that, but you've set this up so that at least for three continuous elections, the candidates who happen to have been there in the Democratic districts and Republic districts have won every time, closed the same votes. And the voters have broken the same way every time, so it almost doesn't matter who the candidate is and it almost doesn't matter who the voter is, because the result's preordained and that's their lament that we're eliminating meaningful elections in Pennsylvania with a map that preordains results. They point to three elections as proof of that.

MR. TORCHINSKY: I think that's where I -- that's where we differ with them. There's no such thing as preordination in an election, because if you look at history, every time a court has declared -- or petitioners have come in front of a court declaring something was preordained, the results never work out that way. I point you

to the North Carolina case from the '90s --

CHIEF JUSTICE SAYLOR: We're coming full circle here. That's where we started out. If you have another point or two, I'd appreciate you making them. And then absent some questions, we'll move to the Speaker.

MR. TORCHINSKY: Yes, Your Honor, just real briefly. Article 1, Section 4 of the United States Constitution directs state legislatures the authority to draw congressional districts, and to the extent that this Court attempts to impose some sort of new requirement, we believe that that would violate the constitutional delegation of authority to the state legislature.

So this Court needs to tread carefully to make sure that it doesn't violate the provisions of Article 1, Section 4 and impose something on the legislature that doesn't appear in the Constitution or in the statutes.

MALE JUSTICE: I know you're finishing up, but you haven't spoken at all to remedy. Assume reluctantly that you do not prevail on constitutionality, is three weeks a fair

opportunity for a legislature to redraw these maps? Because I think it should get the opportunity.

MR. TORCHINSKY: Your Honor, as I mentioned at the beginning, I'm going to defer to Mr. Braden on remedy, but I think we would like at least three weeks.

With that I will turn to Mr. Braden to advance our free expression and remedy arguments. Thank you, Your Honor.

CHIEF JUSTICE SAYLOR: Thank you.

MR. BRADEN: I had to check my watch to make sure I could say good morning still. May it please this Court, I'm Mark Braden, I represent the Speaker.

The First Amendment argument is a political policy argument masquerading as a legal argument. I think everybody knows on this Court that the analysis at the lower court by Brobson is in fact correct under the First Amendment.

What they're asking you to do is invent a new interpretation of the Free Expression Clause in the First Amendment that's not be recognized anywhere to the best of my

knowledge except in North Carolina as a secondary consideration in that case, which in all likelihood is going to get stayed in a couple days.

So they're inviting you into the political thicket, because what their client wants, the League of Women Voters, is a nonpartisan, nonpolitical line drawing process, (inaudible) League of Women Voters nationwide has that position.

Your Constitution provides that the lines are supposed to be drawn by a political body. In shock of shock, they use politics to do that. At every stage the United States Supreme Court, that is when they've talked about this -- in the vast majority of the cases, they actually started out by talking, well, we only go into this area with great trepidation, because the political body should be doing this. They only in very limited circumstances unweighting the votes, equal population, and race have they decided they're willing to go in the political thicket.

Now, this invitation is one you need to

not accept. It's damaging in any number of reasons. You're not just going into the political thicket, you're impaling this Court and the judiciary on the political thorns and you will effectively be bleeding out blood of your establishment as a judicial body by doing this political action.

You cannot have a position where a process is assigned to a political body and then take the position if they do what political bodies do, that's unconstitutional.

MALE JUSTICE: That sounds a lot like the argument made by the defendants in Brown versus Board of Education.

We in Topeka know best about the education of our students. Don't get involved -- don't get involved in this thicket. So it seems to me much more corrosive of our democracy, sir, that a Court stay its hand when constitutional rights have been violated then to allow the political branches of government to create districts that look like Goofy kicking Donald Duck.

MR. BRADEN: You know, I think it's outrageous to think that race, which the

first -- the Equal Protection Clause comes from a Civil War where 7,000 people -- 700,000 people died.

Everyone in this Court knows, as everyone involved in the jurisprudence knows that the main aim of the Equal Protection Clause was race and that we should somehow recognize and be concerned about the same level there as between these two equally powerful opponents in this process, the Republican Party and the Democratic Party.

MALE JUSTICE: We indicate our equal protection principals under our constitution, sir, outside of the racial context, we recently issued the opinion in William Penn School District, which was not a racial case, vindicating our equal protection principals under our Constitution.

So is it your argument that we don't apply equal protection rights outside of racial gerrymanders?

MR. BRADEN: Absolutely not. I'm just saying if we go through traditional equal protection analysis, which has the notion of you only get to strict scrutiny if you have a

suspect classification.

Oh, by the way, we don't have a suspect classification here. We have a classification that is specifically and expressly recognized in the Constitution. This is a political argument.

People want to make the redistricting process nonpolitical in your state, even though it is expressly is assigned by the U.S. Constitution --

MALE JUSTICE: Counsel, may I stop you for a second. Just succinctly, are you arguing that this is not judicable apropos of the plurality in Vieth or are you arguing that it's judicable but under these facts there's no viewpoint discrimination?

MR. BRADEN: Under these facts there's no viewpoint discrimination. The judicable question, it could actually change. There are four members of the U.S. Supreme Court who believe it's non-judicable. There's one member who in his last time he spoke about this indicated he had some severe doubts as to whether that's possible.

But do I think it's judicable and do I

think that under the prior standard, which I think actually as we stand here right now is your existing standard, which is the Bandimere standard, I actually think you could -- you could in certain circumstances, and there have been circumstances in the past, where that shutout standard, which is really the Bandimere standard, could be met.

FEMALE JUSTICE: Counsel, may I just follow up so that I'm clear on what your argument is. The evidence through the experts that were heard in the Commonwealth Court established that districts were drawn based upon the manner in which citizens of Pennsylvania expressed themselves at the voting box.

So that if a citizen voted Democratic in four out of last four elections, they were classified in one category. If they were -- voted Republican in those elections, they were classified in another way and they were placed in districts so that if you were a Democrat, your vote was diluted.

Now, my understanding is that you are arguing on behalf of the respondents on

Pennsylvania's Free Expression and Association Clause.

Is it your position that it is defensible under our Free Expression Clause for the legislature to punish a voter by diluting a vote by placing them into a district where their vote isn't going to carry equal weight?

MR. BRADEN: I beg the answer to two pieces there. If the question is do I believe that the legislature made political decisions, the answer to that is of course.

FEMALE JUSTICE: Well, that wasn't --

MR. BRADEN: But, no, let me get to the second part. Do I believe that that was viewpoint discrimination, no, I don't think that's viewpoint discrimination.

FEMALE JUSTICE: What is it then, if you place someone -- if you classify someone based upon the manner in which they have spoken at the ballot box, what is that if that is not viewpoint discrimination?

MR. BRADEN: To be viewpoint discrimination, we could easily identify it if we decided the Democratic voters didn't

get to vote or we were to make it more difficult for them to vote.

What you're talking about here is identifying discrimination, because they don't get to vote for a winning candidate or the candidate --

FEMALE JUSTICE: No, not at all. No, I'm talking about the evidence, sir, that was presented by the experts before the Commonwealth Court, which the Commonwealth Court found to be credible. Voters were classified and placed into districts based upon the manner in which they voted in prior elections.

MR. BRADEN: The answer to that is yes, they were. People made political decisions, that's the essence of the process from day one. If you decide you want to reject that, then that's easily done and many states have done that.

Many states have changed their laws, they've changed their laws. But so long as it's assigned to the political body, then you will expect because it's been going on for more than 200 years -- gerrymandering in

Pennsylvania if you look at Scalia's plurality opinion in Vieth predates the U.S. Constitution.

FEMALE JUSTICE: If we could just get back -- if we could get back to the point at hand. If this Court decides that it is unconstitutional to classify voters based upon the manner in which they have spoken in the ballot boxes, then that would be a decision for this Court to make.

Do you agree with that?

MR. BRADEN: This Court -- let's be clear and I thought it was very clear in the answer, which it's very clear that political considerations were taken in regard here, and it's clear that that resulted as it did in Holt with -- this is just four years ago.

Realize that what you're talking about here is changing your opinion from four years ago when you said the intention to gather together certain targeted blocks of voters was acceptable under your law. Now four years later, you're going to identify simply this is a political process --

MALE JUSTICE: If you're talking about

Holt as I take you are from you're -- that also presupposes compliance with the other provisions, which Judge Brobson found are clearly violated here -- compactness, contiguity, and subdivision.

So I come back to my question I asked of your cocounsel. It seems to me there's no limiting principal and it seems to me the force of your argument in principal has to be that there is no, there can be no constitutional violation until partisan gerrymandering context, assuming equipopulous districts and assuming no Voting Rights Act violation; isn't that correct?

MR. BRADEN: No. First of all, your reference to Holt actually makes my case, because you have actual statutory language that directs you there.

What you're being asked about and what you're saying is, oh, we should take the statutory provisions, these constitutional provisions, and impose them and create them as a requirement under your law, which doesn't exist now and hasn't existed for 200 years.

And the Supreme Court, this classification that we're concerned about, is exact classification in Gaffney versus Cummings that the Supreme Court absolutely approves, specifically approves. This is the exact classification --

CHIEF JUSTICE SAYLOR: Justice Todd has some questions.

JUSTICE TODD: Could you go back to your response to Justice Donohue's question. You seem to be agreeing with her characterization of how the political process worked in this case and these maps.

Are you concluding, though, that that does not -- that that process does not constitute viewpoint discrimination?

MR. BRADEN: Absolutely -- absolutely not viewpoint discrimination.

JUSTICE TODD: Please explain.

MR. BRADEN: First of all, to be viewpoint discrimination, you have to have something discriminatory happening to someone. So if you had a right to proportional representation or if you had a right to vote for somebody who wins, that

right would make -- and that might be actually we were impacting negatively that right.

What you're talking about here again is a classic policy decision. We decide the plaintiffs here who are suing because they want more Democratic members of Congress, we shouldn't -- that's exactly what they say and they want a new map, because they think it will elect more Democrats.

So that right that, that decision as to whether we should have the safe districts -- or actually what they're arguing for are competitive districts is a standard policy decision. It's the type of policy decision that some states have decided to put in their statutory provisions we should have competitive races.

Some have said -- and there's an argument for actually having safe seats, because more voters are comfortable being represented by someone who shares their political view.

FEMALE JUSTICE: And that's your position regardless of the extent to which an

individual party's votes are diluted?

MR. BRADEN: Individual party's vote, I don't believe are diluted whatsoever.

FEMALE JUSTICE: I'm sorry, individual members of a party.

MR. BRADEN: Absolutely not. I don't agree with that analysis whatsoever. First of all, it's difficult to identify who they are because when our Democratic voters --

FEMALE JUSTICE: Counsel, there was evidence abundant before the Commonwealth Court that it is not difficult to identify who these voters are and how they vote. That is precisely how the it the maps were drawn.

MR. BRADEN: Identifying the voters how they voted in prior elections is easy to do. We don't need any sophisticated computer to do that. In this building sharing space with you are 203 members of the House who undoubtedly know their particular geographic and how it votes better than any political scientist from anywhere.

So, yes, absolutely. In the absolutely political process, the Supreme Court has repeatedly recognized a political process

being one that sorts voters on politics and that doesn't violate the Constitution.

MALE JUSTICE: May I ask you sir, I think we're getting really involved. I think your argument is really simple, it's judicable, there's a test, and they failed to meet the test and therefore they lose.

But here's what's missing in that to me, which is in a phrase or in a sentence, what is the test that they failed to meet? We have put the rabbit in a hat if you say the test is invidious discrimination.

I mean, is the test overwhelming partisanship, is it more than that, what's the test?

MR. BRADEN: Well, I believe the test as it exists right now, and this is -- reasonable minds can disagree. The only standard that appears to be present right now is the notion of being totally shut out of the political process.

People say, well, that's a standard that can't be met, and I would suggest to you that that involves no memory of American History to say that a political party can't --

MALE JUSTICE: We got it. You answered my question.

MALE JUSTICE: Let me take you down a different constitutional avenue. Your entire argument as been centered and premised on the Equal Protection Clause. Petitioners have raised Article 1, Section 5, free and equal elections.

Now, very specific to our Constitution, our Constitution that particular Section 5 predates the 14th Amendment by 92 years.

Urfer in 2002 at that juncture left open the possibility that Article 1, Section 5 can be viewed as being more expansive than the federal Constitution.

If that being so and this Court finds same, we could avoid an Edmond's analysis and we could apply whatever definition we so believe we should give to that clause and we can look to Article 2, Section 16 for direction.

That completely eviscerates your argument, would you address that for me?

MR. BRADEN: No, I don't think it does whatsoever. I think that's just simply --

what we're trying to hear in all these arguments is the same thing, which is we're trying to take a political process assigned by the U.S. Constitution and understood before -- this is a process.

Again I point you to Scalia's opinion describing the process of trying to do partisan gerrymandering in Pennsylvania prior to the adoption of any of these provisions.

So this is a political process assigned by the Constitution. Any effort to do something else will inevitably require you to do it in a different political way.

There are ways to get there. Many states have in fact done that, but it's fundamentally anti-Democratic for this Court to take the existing law and decide to change it.

MALE JUSTICE: If that's the case -- I understand the argument. But if that's the case, why did this Court in Urfer, in SCOTUS, in Vieth, particularly Justice Kennedy specifically and expressly envision a day, and we may not be at that day, when breakneck speed advancements in technology have changed

the game such that your arguments are relating to a prior world before voter files.

Voter files are something that every justice up here knows about. There's nobody here who hasn't run in the last four-and-a-half years in front of the voters.

So how do you reconcile your argument with the current day of technology, which arguably was envisioned in Vieth and Urfer.

MALE JUSTICE: In all due respect, I think those technology arguments are troglodyte arguments.

MR. BRADEN: The reality is if you go back to Bandimere, you'll see that the plaintiffs argued that there was sophisticated computer program that got them to predict elections going forward.

If you go through the process, you go to Battom v. U (ph), which some people argue the congressional plan there was one of the great gerrymanders in American History in the sense of its endurance and the protection of Democratic incumbents.

That was drawn with the work of a Caltech computer, but the reality is you

don't need a computer when you have 203 members making political decisions. This process that we have is a political process, and it is a little bit of, as you know, a little bit of the (inaudible).

What's happening, we're saying this is really this partisan plan, but did nobody notice that 36 members of Democratic Party voted for it and it was endorsed by the senior member of the congressional delegation, who's a Democrat. You think he wasn't involved in drawing the plan.

MALE JUSTICE: I think his seat was safe.

MR. BRADEN: His seat was safe so long as it wasn't drawn by a computer. Let it be drawn by a computer and it won't be safe. It's important we make this incumbent argument and I think that's a very important argument to understand.

Let's use the computer, and we don't have to go too far. There's a recent decision in Virginia. One of my clients is the state of Virginia. They lost a racial gerrymandering case on a congressional plan.

Now, I will have to admit that the congressional district was only contiguous if you're a very strong swimmer. It was offensive to the eye, and so they hired a gentleman we've already heard some about, Bernie Grofman (ph) and I know him quite well. He's a distinguished political science, he provided you one of the amicus briefs, and he drew the plan and solved interocular -- or the racial gerrymandering of how that plan looked and got a nice, good district down there. That district included of course moving around parts of Norfolk.

And the incumbent Republican member from Norfolk was close to being -- the next election was likely to be the chairman of the Armed Services Committee.

So this nonpartisan plan and Dr. Grofman in all good respects following, he made a decision that no politician in Virginia in their right mind would have done and was not in the best interest I would suggest to you, even if this was a bad Congressman, was not in the interest of the Norfolk, the largest military installation arguably in the world

that the person who's likely to send money there, we're going to remove him from office because this political scientist decided to draw a plan that looks better to the eye.

MALE JUSTICE: Counsel, I don't think that's helpful. I think there's been almost unanimity among all counsel and the Court that we're going to give -- if this is unconstitutional, we're going to let the legislature fix it.

Now, if they decline to fix it, which has happened around the United States, that's not our fault.

MR. BRADEN: That's great, but of course what you're doing is you're sending it back with how do we do this without politics. I guess we could do a lobotomy on the 203 members --

MALE JUSTICE: There's a distinction -- again I'm not going to argue with you.

There's a distinction, if you will, between partisanship, which first counsel argued, and overwhelming partisanship, which Mr. Aronchick argued. We can set forth --

MR. BRADEN: That's a good point --

(Talk over)

MR. BRADEN: The problem we have of course there is the same problem we've had at every stage, which I would describe as a Goldilocks problem -- what temperature is the right temperature, how much partisanship is too much partisanship, yeah, well, you've -- but you have to send it back to the legislature and you have to tell them and you got to give them directions.

MALE JUSTICE: But your client bought that problem. In other words, your client had the opportunity to protect that Norfolk military base senior chairman. Your client had the chance to protect Congressman Y or Congresswoman X and arguably your client blew it by being too greedy.

Now, it's our job to measure this product, including Goofy and Donald Duck, against our Constitution, and I don't necessarily think you can be heard to argue now, well, some politics needs to be in there.

It will be incumbent if we get there for your client to pick up the pieces, but we

have to decide this case. We don't have to hypothesize a closed case. We have to deal with this case, Counsel.

MR. BRADEN: All due respect, if you're going to send it back to the legislature with some chance of them adopting a plan that's constitutional, you have to tell them what that is, so you have to identify the standard. The process with this isn't -- people have to draw plans going forward.

MALE JUSTICE: How is that distinct from equal protection, is it compelling state interest, is it narrowly drawn, First Amendment --

MR. BRADEN: It's straightforward --

THE COURT: Due process, substantive due process. I mean we provide tests -- courts provide tests for all of these broad maxims and then we evaluate whether the test whether the test -- we'll do that here.

MR. BRADEN: The problem here is the one I started out with. I know that it's an uncomfortable argument, but I just have to make it here.

We have a process that's been expressly

and clearly assigned to the political branch of the government. There are many options available --

CHIEF JUSTICE SAYLOR: We understand that. We've come full circle, so we certainly appreciate your advocacy and understand your overarching point that it's quintessentially political and commanded by the United States and state Constitution to the political branch. Thank you.

MR. BRADEN: Let me just real quickly, I know I was to address the remedy. I would suggest the remedy first is actually to send it back. Once you identify a standard, then it would seem to me then you need to send it back to the district Court to make a factual finding as to whether this plan is invalid under that standing.

Now, I'm under the impression that that's likely not to be one that this Court's willing to agree to, but that would be the logical way of doing it so we could actually address something in the argument that we knew existed, since whatever you create will have not existed before.

But if we're actually talking where you decide that you can under the new standard decide this is unconstitutional and some amount of politics is too much politics and you figure out where that temperature is, then it should go back to the legislature who then will draw a plan, not for this election cycle, but the next election cycle would be my basic argument.

Again, I think it's unlikely this Court is going to accept that. My notion is if this was such a severe violation of the Constitution and that you needed to deal with this, then of course a suit would have been filed in 2011.

So I would suggest there's no reason to disrupt the political process, which is a real process here, people running and deciding where to run and are actually running right now as we speak, and that any remedy should be for the next election.

If you're saying we're not going to do that, they need a month, give them a chance to do the politics here. This notion of we can just do one of these maps, here's the bad

news about those computer maps. Most of those are unconstitutional. A lot of those computer simulations have population ranges of one or two percent. So we throw a dart at one of them and you decide to do that, then that will be unconstitutional.

Maps, I'll stop here real quick and walk away and not to go too far afield here, but if you read Plato's Republic, and I know people are scratching their heads going, you notice in the Republic, Plato I would suggest you could argue certainly the first political philosopher, maybe the first political scientist who we are familiar with, that has a written record of.

And in the Republic what a shock. This philosopher at the end of it decides that the best person to govern is a philosopher, and so what a shock that we have political scientists who think the best people to draw the lines are other political scientists.

And I would suggest to you, we could do that, but to do that what you need to do is change your law, actually change your law, pass a statute, and assign it to masters or

some type of group like that, which is the case in many states.

CHIEF JUSTICE SAYLOR: We understand. Thank you.

Now, my understanding is that Tabas has just a few brief words on behalf of the interveners. Hopefully that's the correct understanding.

MR. TABAS: When it comes from the Chief Justice, it is. Mr. Chief Justice, and may it please this Honorable Court, I'm Lawrence Tabas on behalf of the interveners.

I have two equally important arguments that I want to make, both of which are in recognition that we are on the eve of this election and primarily deal with the issue of remedy should this Court determine that a remedy needs to be fashioned.

Let me just say at the outset before I tell you my two arguments, the interveners did not participate in the drafting of the map and they were not consulted, but they absolutely had the right these last three election cycles and the right to go into this fourth election cycle to rely on the

presumption of the constitutionality of that map.

MALE JUSTICE: So they're convenience trumps petitioner's constitutional rights?

MR. TABAS: No, Justice, no, Your Honor. It's not their convenience, it's their Pennsylvania constitutional rights. The petitioners, Your Honor, are not the only individuals in this case who have rights at stake.

MALE JUSTICE: How about this then. I understand. So how about this, Topeka, Kansas, the school board relied on the long-standing segregated schools, and they only ordered X number of schoolbooks, and now the Supreme Court says desegregation. Well, we've relied for our purchase of schoolbooks on the existing map.

Why weren't they entitled to rely, but your clients are entitled to rely?

MR. TABAS: Because our clients are entitled to have their free speech, free association, Pennsylvania constitutional rights not wiped out simply because the petitioners who waited three cycles, and who

unlike in Sprague, had knowledge well in advance of their potential claims. Even their experts, Your Honor, refer to data that was available in 2011.

That as a result of that, our client's constitutional rights are no less equal than those of the petitioners. The petitioners are asking you to choose theirs over ours.

MALE JUSTICE: Is your concern satisfied if, again hypothetically, we find that this is an unconstitutional map, we permit under the Butcher case, we permit this election to go forward with this unconstitutional map, and there is law that I just said, Butcher, that says you do that if it's so far along that it disrupts the democratic process and we put this in place for 2020?

MR. TABAS: Your Honor, that is exactly what we're saying. The Butcher Rule, which is this Court's rule, is that when the election is imminent and a primary is defined under the Pennsylvania Election Code as an election.

In fact the primary is one of the most important aspects of an election, because it

determines who will be the actual candidates going into November. We're on the eve of that.

MALE JUSTICE: Aren't we always on the eve of an election? I mean, every one of us had to begin running long before the primary. There are people already running for elections that aren't even on the ballot this year. The election cycle never ends.

Won't we always be on the eve of an election, won't this argument always be available to your clients or people like them?

MR. TABAS: Your Honor, we are living, you're correct, in a world of 24/7 campaigning and elections sad to say, even though that's part of my business.

But, Your Honor, look, if this had been brought in 2012 or shortly thereafter, we understand that the whole world knows the first couple of years after a reapportionment plan, they are subject to challenge.

But it went through '14, it went through '16, we even went through the historic election of '16 and they didn't even bring

the case until June and didn't even ask this Court for emergency relief for October.

MALE JUSTICE: Mr. Tabas, wouldn't you then be arguing had they brought it in 2011 or 2012, wouldn't you be arguing we don't know the results yet, this isn't baked in, this may not be durable, this may be an idiosyncrasy or an anomaly as opposed to now when we have baked in three-cycle durability?

MR. TABAS: Although historically, Your Honor, almost every challenge to a redistricting plan occurs shortly after the plan has been adopted, either by a legislature or by a commission, or whatever force is available in that particular state and people understand that.

In fact, Your Honor, I'll go so far as to say had the petitioners brought their case in December of 2016, my argument would not be the same today.

But now we are in the middle of January. We're just less than four weeks from signing and circulating petitions.

Listening to the Executive Branch counsel go through what they say they can do,

it's not important what the Executive Branch says they can do. Because even a few changes, let alone the massive ones that they are suggesting, have serious consequences.

This is not the same as you think of just maybe dropping a pebble in some water, because the pebble was small there was not much of a consequence. The ripples from this will be severe and significant.

It's not just changing dates, because it's not just new dates. It also new districts, new candidates, the need to educate voters as to all these changes. You've seen in cases before you how long and hard it is to educate just a voter when their voting district and polling place changes let alone an entire congressional district, it's the need to retrain the circulators who take the nomination petitions around. You all know what a fun process that is.

Finally it's the increased workload that the Executive Branch put into the record. They said it would be an increased workload and they also said in the record but there would be a decrease in the amount of time

available to do it.

And then finally, the increased substantial cost. Those are the practical factors that right now jeopardize the election process and the integrity of it and at the same time run the risk of wiping out our client's constitutional rights.

They have no remedy anymore. If you change the map this year, our client's constitutional rights are lost for 2018 forever.

MALE JUSTICE: Can you explain how they would be shut out in a way that the petitioners are not currently shut out?

MR. TABAS: Because the new map for a 2020 election would give them the opportunity to have a map that this Court believes is constitutional if that's the way this Court goes in this.

We have no second chance, we are done. If you rule in favor of the petitioners for 2018, you have effectively wiped out once and for all these constitutional rights that we have been exercising, as the record shows, since November and December of 2016.

Again, a justifiable reliance on the presumed constitutionality of a map that's been through three cycles.

Your Honor, in some of your questioning of the other counsel, you made a point about the maps and the particular time, now we've had three elections to kind of assess them.

Every map, Your Honor, is a snapshot in time. That map that was drawn back then in 2011, nobody in this room I would say, me included, would have predicted the results of the election in 2016.

The world has changed dramatically. Elections change. Three counties the record show that had voted for President Obama in both elections switched and voted for President Trump.

That district that the petitioners like to go around saying is a Disney cartoon character kicking each other, that district overwhelmingly voted for Secretary Clinton --

MALE JUSTICE: In the congressional it doesn't change, that proves the point. Regardless of those swings, the congressional proportion has remained exactly what your

clients -- or the other respondents designed, exactly.

And it proves, doesn't it, the genius, political genius, what the respondents designed that notwithstanding these other swings, their gerrymander has proved durable?

MR. TABAS: Absolutely it doesn't, Your Honor. With all due respect, it proves the opposite. It proves that the voters went in there independently in that district and chose candidates.

They chose Secretary Clinton for president of the United States, they chose the Congressman Meehan for Congress. If they proved that point that you said, Your Honor, then not only would Secretary Clinton have won, but so would have been the Democrat challenging Pat Meehan.

MALE JUSTICE: We're to assume that the respondents who are professional politicians don't know about ticket splitting?

MR. TABAS: But that's just the very point. Any one of these maps, you look at them. There were 24 counties in Pennsylvania that have a Democratic registration edge, but

11 of them didn't vote for their candidate -- only 11, excuse me, voted for their candidate for president.

So to say that these congressional maps absolutely determine an outcome based on a snapshot from 2011, takes -- doesn't take into account the political reality of changing electoral environments.

FEMALE JUSTICE: Except for the fact that the evidence before the Commonwealth Court was to the contrary. Dr. Chen predicted 54 out of 54 congressional elections using the information that was available in 2011 and used. 54 out of 54 elections for Congress were statistically (inaudible). It was unchallenged. It was unchallenged evidence.

MR. TABAS: Again, Your Honor, our clients not having drawn the map, but I will answer and say this: First in particular, even though that was the predictions that he maybe put into the record, the fact of the matter is, again going back to this district with Congressman Meehan, if it was such a map that was drawn so cleverly and so ingeniously

to protect the Congressman, even though it voted for Secretary Clinton, why have five Democrats in the record declared to run against Mr. Meehan in the 2018 election?

FEMALE JUSTICE: Because hope springs eternal.

MR. TABAS: I think the president --

FEMALE JUSTICE: But that's not the basis that we're using.

MR. TABAS: It isn't. But the point is that again when you look at the remedy that would come here at this particular stage, the disruption would be not only to our client's constitutional rights, to the election process as a whole, to numerous other candidates running for office statewide, the legislature at the same time, and also, Justice --

MALE JUSTICE: May I ask you, Mr. Tabas, you're about to finish up and actually you've segued to exactly what I exactly wanted to ask you.

Appreciate this goes beyond the interest of your client. But does it benefit the generalized concern you expressed if we

direct the spending of the $20 million and let the governor's race, the United States Senator's race, half the House -- I'm sorry, half of the Senate, all of the House, just go forward with a normal election and run a congressional election on a separate calendar?

MR. TABAS: Your Honor, if this Supreme Court did that, I believe the Court would be directly involving itself in an election process beyond the scope of what it should be doing, because you would now have two separate kinds of races -- people running for governor, the State House, the U.S. Senate, Congress.

There are calculus and issues that involve in bringing voters out. You have two separate primaries, the turnouts could be significantly different.

Having people have primaries in July and August, Your Honor, could end up with people on vacations. You can't -- there is -- you change and split this, you are actually making political determinations as to the outcome of the election and who will be the

candidates.

To your point, Justice Wecht, that you made to some of the counsels for the petitioners, why not the primary be in August or September. Other than the vacation schedule, there's another good reason.

To run for Congress, it takes a long time and unfortunately an enormous amount of money. If I think to myself I don't even know if I'm going to be the candidate until September and then I'm going to have to go out and raise $10 million, I may not choose to run for office because of that.

You are changing -- this Court would change the calculus of the entire election process. You don't have to do that if you believe a remedy is warranted in this case.

You can do it for 2020, preserve the integrity of the 2018 election, and protect the constitutional rights of the interveners. Again, there will be nowhere else for them to go if you order the remedy this year.

CHIEF JUSTICE SAYLOR: Thank you.

MR. TABAS: Thank you, Your Honors.

CHIEF JUSTICE SAYLOR: Thanks to all

counsel and with that we'll adjourn this session.

(The hearing concluded)

T

EXHIBIT 2

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February 13, 2018

Via PACFile
Amy Dreibelbis, Esq.
Deputy Prothonotary
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 4500
P.O. Box 62575
Harrisburg, PA 17106

RE: ***League of Women Voters of Pennsylvania, et al. v. The Commonwealth of Pennsylvania, et al.***
Docket No. 159 MM 2017

Dear Ms. Dreibelbis:

On behalf of the Legislative Respondents, Michael C. Turzai, in his official capacity as Speaker of the Pennsylvania House of Representatives and Joseph B. Scarnati, III, in his official capacity as Pennsylvania Senate President Pro Tempore, I enclose a letter which was submitted to the Governor earlier today.

Very truly yours,

Kathleen A. Gallagher

Kathleen A. Gallagher

KAG:rdg

cc: All Counsel of Record, via PACFile

MAIN CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA 17120

February 13, 2018

Governor Tom Wolf
Room 225, Main Capitol Building
Harrisburg, PA 17120

Dear Governor Wolf:

We are in receipt of your letter of February 13, 2018 regarding the map we provided to you and the public on February 9, 2018.

As you know, we received the order from the Pennsylvania Supreme Court on January 22, 2018. As you recall, we met on February 6, 2018 at our request. In that meeting, you told us that you did not have a map and requested that we provide one for your review in accordance with your understanding of the order.

The Court issued its opinion on February 7, 2018. This opinion was delivered on day 16 of an 18 day deadline. Working together in a short time period, we produced a map that meets the Court's order and opinion. It is constitutional and meets the criteria set out by the Court of compactness, contiguity, and respecting political subdivisions.

With all due respect, your pronouncements are absurd:

- **Packing:** You state that the map squeezes densely populated areas into small districts. Each district should have 705,688 persons. Of course densely populated areas are going to be located in smaller and more compact geographic districts. This goes without saying.
- **Cracking:** You state that cities like Reading and Erie are improperly connected to rural areas. Where are you going to connect Erie city but to rural areas? There are no voters living in Lake Erie and we are not able to go into Ohio, New York or Toronto with this exercise. The Pennsylvania counties surrounding Erie and Reading are rural.
- **Splitting:** This map only splits 15 counties and 17 municipalities. The map produced by your own Lt. Governor splits 50 municipalities.
- **Continuity:** As explained in United States Supreme Court opinions in 1983 and 2012, valid, neutral state redistricting policies include preserving the cores of current districts and avoiding contests between incumbent Representatives.

Your letter sets forth a nonsensical approach to governance. Quit being coy. You have had an expert engaged for over a month. You did a listening tour. It's time that you produced a map for the public to review in a transparent fashion. Produce your map and we will put it up for a vote. We will assess how logical it is, how compact it is, and whether it unduly splits counties, municipalities and communities of interest.

Furthermore, we do not concede that the Pennsylvania Supreme Court has the power to invalidate a congressional map (or draw new ones) that has been in place for the past 3 election cycles, that was upheld by a three-judge federal panel in the *Agre* case on January 10, 2018, and that was passed by a bipartisan vote of 136-61 in the House.

This entire exercise, while cloaked in "litigation," is and has been nothing more than the ultimate partisan gerrymander – one brought about by the Democrat Chief Executive of the Commonwealth acting in concert with politically-connected litigants in order to divest the General Assembly of its Constitutional authority to enact Congressional districts.

We look forward to reviewing your "fair" map and are ready and willing to meet at your earliest convenience to see if, together, we can reach consensus on a "fair" map that can garner majorities in the House and Senate and that you will sign.

Sincerely,

Honorable Mike Turzai
Speaker of the House

Honorable Joseph Scarnati
President Pro Tempore

IN THE SUPREME COURT OF PENNSYLVANIA

League of Women Voters of Pennsylvania, Carmen Febo San Miguel, James Solomon, John Greiner, John Capowski, Gretchen Brandt, Thomas Rentschler, Mary Elizabeth Lawn, Lisa Isaacs, Don Lancaster, Jordi Comas, Robert Smith, William Marx, Richard Mantell, Priscilla McNulty, Thomas Ulrich, Robert McKinstry, Mark Lichty, Lorraine Petrosky, Petitioners v. The Commonwealth of Pennsylvania; The Pennsylvania General Assembly; Thomas W. Wolf, In His Capacity As Governor of Pennsylvania; Michael J. Stack III, In His Capacity As Lieutenant Governor of Pennsylvania And President of the Pennsylvania Senate; Michael C. Turzai, In His Capacity As Speaker of the Pennsylvania House of Representatives; Joseph B. Scarnati III, In His Capacity As Pennsylvania Senate President Pro Tempore; Robert Torres, In His Capacity As Acting Secretary of the Commonwealth of Pennsylvania; Jonathan M. Marks, In His Capacity As Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State, Respondents	:	159 MM 2017

PROOF OF SERVICE

I hereby certify that this 13th day of February, 2018, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

IN THE SUPREME COURT OF PENNSYLVANIA

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(Continued)

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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/s/ Kathleen A. Gallagher

(Signature of Person Serving)

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Representing:	Respondent Turzai, Michael C.

EXHIBIT D

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

Jacob Corman, in his official capacity as Majority Leader of the Pennsylvania Senate, Michael Folmer, in his official capacity as Chairman of the Pennsylvania Senate State Government Committee, Lou Barletta Ryan Costello, Mike Kelly, Tom Marino, Scott Perry, Keith Rothfus, Lloyd Smucker, and Glenn Thompson, Plaintiffs,	:	
v.	:	Civil Action No. 18-443
Robert Torres, in his official capacity as Acting Secretary of the Commonwealth, And Jonathan M. Marks, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation, Defendants.	:	

AFFIDAVIT OF STATE SENATOR JAY COSTA

Jay Costa, being duly sworn, deposes and says:

1. I am an elected, seated and sworn member of the Senate of Pennsylvania.

2. The Senate of Pennsylvania is one of two chambers that comprise the Pennsylvania General Assembly.

3. I represent the 43rd State Senate District, which is comprised of a portion of Allegheny County, Pennsylvania.

4. I was first elected to the Senate of Pennsylvania in 1996. I am currently serving my sixth full term as a state senator.

5. The Pennsylvania General Assembly is composed of four caucuses; two in the Senate of Pennsylvania, a Republican and a Democrat; and two in the Pennsylvania House of Representatives, also a Republican and a Democrat.

6. Each caucus elects a Leader.

7. I have served as Leader of the Senate Democratic Caucus since the beginning of the 2011 Legislative Session of the Pennsylvania General Assembly.

8. Prior to being elected Leader, I was elected to two other leadership positions with the Senate Democratic Caucus; Caucus Chairman and Democratic Chairman of the Senate Appropriations Committee.

9. For the 2017-2018 Sessions the Senate of Pennsylvania has 16 elected, seated and sworn Democratic members and 34 elected, seated and sworn Republican members.

10. I have closely followed the proceedings in the *League of Women Voters of Pennsylvania, et al. v. Commonwealth of Pennsylvania, et al.* through the Pennsylvania courts.

11. I am aware of the contents of November 9, 2017 Order issued by the Pennsylvania Supreme Court in *League of Women Voters of Pennsylvania, et al.*

12. I was also aware of the proposed Findings of Fact and Conclusions of Law issued on December 29, 2017 by Pennsylvania Commonwealth Court Judge Kevin Brobson sitting as a Special Master pursuant to the Supreme Court's Order of November 9, 2017.

13. The Pennsylvania Supreme Court's January 22, 2018 Order in *League of Women Voters of Pennsylvania, et al.* declared Pennsylvania's Congressional Redistricting Act of 2011, Act 131 of 2011, unconstitutional and enjoined its use in congressional elections beginning with the May 15, 2018 Primary Election, 25 P.S. §§ 3596.101–.1510.

14. The Pennsylvania Supreme Court issued opinions on February 7, 2018, in support of its January 22, 2018 Order.

15. One week following the Court's January 22 Order, Senate Bill 1034, Printer's Number 1411 (Senate Bill 1034) was introduced, referred to and reported from the Senate State Government Committee on January 29, 2018.

16. Senate Bill 1034 repeals the statutory description of the districts for Pennsylvania's seats in the United States House of Representatives contained in Pennsylvania's Congressional Redistricting Act of 2011 previously found unconstitutional by the Pennsylvania Supreme Court.

17. Senate Bill 1034 is a vehicle for a legislatively enacted remedial congressional redistricting plan.

18. Senate Bill 1034 was unanimously passed by the Senate of Pennsylvania on January 31, 2018 the same week it was introduced and within three consecutive calendar and legislative days, the minimum required by Article III, Section 4 of the Pennsylvania Constitution.

19. Senate Bill 1034 was sent to the Pennsylvania House of Representatives, where the bill was referred to the House State Government Committee on February 1, 2018.

20. Senate Bill 1034 was reported from the House State Government Committee and received the first of its three constitutionally required readings on February 6, 2018, the second session day after the bill's referral to committee in the House.

21. As of the date of this affidavit the Pennsylvania House of Representatives has not taken any further legislative action on Senate Bill 1034 since February 6, 2018.

22. As of the date of this affidavit the Pennsylvania House of Representatives has not been in session since February 6, 2018.

23. The Majority Leaders of the Senate of Pennsylvania and Pennsylvania House of Representatives set the dates on which their respective chambers are in session and determine the actions taken on bills on each chamber's respective legislative calendars.

24. Both the Senate of Pennsylvania and Pennsylvania House of Representatives customarily meet Monday through Wednesday during weeks they are scheduled to be in session.

25. Previously, the Majority Leaders of the Senate of Pennsylvania and Pennsylvania House of Representatives have scheduled additional session days and suspended the Rules of Senate and General Operating Rules of the House of Representatives regarding procedure when required to meet deadlines. This occurs most commonly in advance of the end of the Commonwealth's fiscal year, which ends on June 30 each year.

26. A session day for the Senate of Pennsylvania was tentatively scheduled for Friday, February 9, 2018. However, the Senate did not hold session on that date.

27. If the House had amended and passed SB 1034 to include the Joint Submission by Senate President Pro Tempore Scarnati and Speaker Turzai, or any other proposed remedial congressional redistricting map, the Senate could have held session on February 9, 2018 to consider the House amended version of Senate Bill 1034.

28. I did not see a copy of, receive prior notice of, nor discussed the February 9, 2018 Joint Submission by Senate President Pro Tempore Scarnati and

Speaker Turzai to the Governor prior to its filing with the Pennsylvania Supreme Court.

29. Because Senate President Pro Tempore Scarnati and Speaker Turzai independently presented the Joint Submission to the Governor, rather than amending Senate Bill 1034, or any other piece of legislation, to include the Joint Submission, there was no amendment for the General Assembly to enter in the legislative journals.

30. No law or procedural rule of the General Assembly requires gubernatorial approval prior to the amendment or passage of legislation.

Jay Costa

Sworn to and subscribed before me

This 2 day of March, 2018

Notary Public

Commonwealth of Pennsylvania – Notary Seal
SUZANNE CONROY – Notary Public
Allegheny County
My Commission Expires Feb 4, 2022
Commission Number 1221152

UNPUBLISHED OPINIONS

2018 WL 341658
Only the Westlaw citation is currently available.
United States District Court, M.D. North Carolina.

COMMON CAUSE, et al., Plaintiffs,
v.
Robert A. RUCHO, in his official capacity as Chairman of the North Carolina Senate Redistricting Committee for the 2016 Extra Session and Co–Chairman of the Joint Select Committee on Congressional Redistricting, et al., Defendants.
League of Women Voters of North Carolina, et al., Plaintiffs,
v.
Robert A. Rucho, in his official capacity as Chairman of the North Carolina Senate Redistricting Committee for the 2016 Extra Session and Co–Chairman of the Joint Select Committee on Congressional Redistricting, et al., Defendants.

No. 1:16–CV–1026, No. 1:16–CV–1164
|
Filed 1/9/2018

Synopsis

Background: Non-profit organizations, political party, and individual voters brought actions against state legislators alleging that North Carolina legislature's congressional redistricting plan was partisan gerrymander, in violation of Equal Protection Clause, First Amendment, and Article I of United States Constitution. Actions were consolidated.

Holdings: A three-judge panel of the District Court, Wynn, Circuit Judge, held that:

[1] plaintiffs had statewide standing to challenge plan as a whole;

[2] invalidation of plan as unconstitutional partisan gerrymander did not impact state's statutory obligation to draw plan using single-member districts;

[3] plan had discriminatory intent of burdening representational rights of non-Republican voters;

[4] plan had discriminatory effect of diluting votes of non-Republican voters and entrenching Republican control of state's congressional delegation;

[5] plan's discriminatory effects were not justified by legitimate state districting interest or neutral explanation;

[6] plan had chilling effect on reasonable non-Republican individuals' and entities' First Amendment activities;

[7] plan exceeded state legislature's delegated authority under Elections Clause;

[8] plan violated Constitution's grant of authority to "the People" to elect their representatives;

[9] state was enjoined from conducting any further elections using plan; and

[10] state was entitled to second opportunity to draw constitutional plan.

Ordered accordingly.

Osteen, Jr., District Judge, concurred in part, dissented in part, and filed opinion.

West Headnotes (72)

[1] Constitutional Law
Persons Entitled to Raise Constitutional Questions;Standing

Article III's case-or-controversy requirement demands that plaintiff demonstrate standing —that plaintiff has such personal stake in controversy's outcome as to assure that concrete adverseness that sharpens presentation of issues upon which court so largely depends for illumination of difficult constitutional questions. U.S. Const. art. 3, § 2, cl. 1.

Cases that cite this headnote

[2] Federal Civil Procedure
In general;injury or interest

Federal Civil Procedure

Causation;redressability

To establish standing, plaintiff bears burden of demonstrating (1) injury in fact—invasion of legally protected interest that is concrete and particularized, and actual or imminent, not conjectural or hypothetical; (2) causal connection between injury and conduct complained of; and (3) that it is be likely, as opposed to merely speculative, that injury will be redressed by favorable decision.

Cases that cite this headnote

[3] Election Law

Parties;standing

In racial gerrymandering case, plaintiff lacks standing to challenge districting plan on statewide basis.

1 Cases that cite this headnote

[4] Election Law

Vote Dilution

In one-person, one-vote cases—in which plaintiff in overpopulated district alleges that she is injured because districting plan dilutes her vote relative to voters in underpopulated districts—plaintiff may challenge districting plan on statewide basis.

Cases that cite this headnote

[5] Election Law

Parties;standing

Plaintiffs in underpopulated districts lack standing to challenge districting plan on one-person, one-vote grounds.

Cases that cite this headnote

[6] Election Law

Apportionment and Reapportionment

State legislatures involved in delicate task of redistricting can—and, in certain circumstances, should—consider redistricting plan's impact on minority groups, including groups of voters previously subject to race-based discrimination, and rely on race-conscious redistricting to advance interests of members of minority groups subject to past discrimination.

Cases that cite this headnote

[7] Associations

Actions by or Against Associations

Constitutional Law

Elections

Constitutional Law

Elections

United States

Judicial review and enforcement

Non-profit organizations, political party, and individual voters had statewide standing to challenge state legislature's congressional redistricting plan as a whole on ground that it was partisan gerrymander, in violation of Equal Protection Clause, First Amendment, and Article I, where some voters resided in districts in which their votes had been diluted, political party suffered from statewide decreases in fundraising and candidate recruitment, while at same time incurring increased statewide costs for voter education and recruitment, state legislature sought to achieve statewide partisan effect, and purported injuries reflected structural violations amenable to statewide standing. U.S. Const. art. 1, §§ 2, 4; U.S. Const. Amends. 1, 14.

Cases that cite this headnote

[8] Constitutional Law

Elections

Partisan gerrymandering in state legislature's congressional redistricting plan constituted legally cognizable injury-in-fact, for purposes of determining whether individual voters belonging to opposing party had standing to challenge plan's constitutionality, in light of voters' allegations that they had decreased ability to mobilize their party's base, to attract

volunteers, and to recruit strong candidates, and felt frozen out of democratic process.

Cases that cite this headnote

[9] **Associations**
Actions by or Against Associations

Association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, interests at stake are germane to organization's purpose, and neither claim asserted nor relief requested requires participation of individual members in lawsuit.

Cases that cite this headnote

[10] **Constitutional Law**
Elections

Non-profit organizations concerned with promoting open, honest, and accountable government and fostering education and engagement in elections and political party suffered additional costs and burdens due to state legislature's congressional redistricting plan sufficient to establish Article III standing in their action challenging plan's constitutionality, in light of evidence that plan required organizations to increase their educational efforts, thereby forcing them to incur additional costs, and made it more difficult for party to raise resources and to recruit candidates. U.S. Const. art. 3, § 2, cl .1.

Cases that cite this headnote

[11] **Federal Courts**
Elections, voting, and political rights

Challenge to alleged partisan gerrymander presents justiciable case or controversy; because partisan gerrymandering targets voting rights, deference to political branches' policy judgments animating political question doctrine is inapplicable. U.S. Const. art. 3, § 2, cl .1.

Cases that cite this headnote

[12] **Election Law**
Reapportionment in general

Partisan gerrymanders are incompatible with democratic principles.

Cases that cite this headnote

[13] **Election Law**
Reapportionment in general

Partisan gerrymandering violates core principle of republican government that voters should choose their representatives, not the other way around.

Cases that cite this headnote

[14] **Election Law**
Reapportionment in general

Partisan gerrymandering represents abuse of power that, at its core, evinces fundamental distrust of voters, serving self-interest of political parties at expense of public good.

Cases that cite this headnote

[15] **Election Law**
Reapportionment in general

Partisan gerrymandering runs afoul of rights that are individual and personal in nature, because it subverts foundational constitutional principle that state govern impartially—that state should treat its voters as standing in same position, regardless of their political beliefs or party affiliation.

Cases that cite this headnote

[16] **Constitutional Law**
Redistricting and reapportionment
Constitutional Law
Redistricting and reapportionment

Partisan gerrymandering infringes on core political speech and associational rights by burdening or penalizing citizens because of their participation in electoral process, their voting history, their association with political

party, or their expression of political views. U.S. Const. Amend. 1.

Cases that cite this headnote

[17] Election Law

Reapportionment in general

Because Constitution does not authorize state redistricting bodies to engage in partisan gerrymandering, judicially manageable framework for evaluating partisan gerrymandering claims need not distinguish "acceptable" level of partisan gerrymandering from "excessive" partisan gerrymandering; rather, determination that gerrymander violates law must rest on conclusion that political classifications, though generally permissible, were applied in invidious manner or in way unrelated to any legitimate legislative objective.

1 Cases that cite this headnote

[18] Constitutional Law

Burden of Proof

Plaintiffs need not show that particular empirical analysis or statistical measure appears in Constitution to establish that judicially manageable standard exists to resolve their constitutional claims; rather, plaintiffs must identify cognizable constitutional standards to govern their claims, and provide credible evidence that defendants have violated those standards.

Cases that cite this headnote

[19] Evidence

Weight and Conclusiveness in General

When court serves as finder-of-fact, it must carefully weigh empirical evidence, and discount such evidence's probative value if it fails to address relevant question, lacks rigor, is contradicted by more reliable and compelling evidence, or is otherwise unworthy of substantial weight.

Cases that cite this headnote

[20] United States

Method of apportionment in general

District court's invalidation of state's congressional redistricting plan as unconstitutional partisan gerrymander did not impact state's statutory obligation to draw congressional redistricting plan using single-member districts. 2 U.S.C.A. § 2c.

Cases that cite this headnote

[21] United States

Equality of representation and discrimination;Voting Rights Act

Partisan gerrymandering—not judicial oversight of such gerrymandering—contravenes purpose of district-based congressional districting because it is intended not to achieve fair and effective representations for all citizens, and not to produce more politically fair result. 2 U.S.C.A. § 2c.

Cases that cite this headnote

[22] United States

Equality of representation and discrimination;Voting Rights Act

Statute requiring states to draw congressional redistricting plans using single-member districts did not empower state legislatures to engage in partisan gerrymandering. 2 U.S.C.A. § 2c.

Cases that cite this headnote

[23] Constitutional Law

Electoral districts and gerrymandering

Constitutional Law

Elections, voting, and political rights

Constitutional Law

Redistricting and reapportionment in general

Redistricting plan violates Equal Protection Clause if it serves no purpose other than to favor one segment—whether racial, ethnic, religious, economic, or political—that may

occupy position of strength or to disadvantage politically weak segment. U.S. Const. Amend. 14.

Cases that cite this headnote

[24] Constitutional Law
Gerrymandering in general

In order to prove prima facie partisan gerrymandering claim under Equal Protection Clause, plaintiff must show (1) discriminatory intent; (2) discriminatory effects; and (3) that discriminatory effects are not attributable to state's political geography or another legitimate redistricting objective. U.S. Const. Amend. 14.

Cases that cite this headnote

[25] Constitutional Law
Gerrymandering in general

Plaintiff asserting partisan gerrymandering challenge to legislative redistricting plan under Equal Protection Clause must establish that challenged official action can be traced to discriminatory purpose. U.S. Const. Amend. 14.

1 Cases that cite this headnote

[26] Constitutional Law
Statutes and other written regulations and rules

To establish discriminatory purpose or intent, plaintiff alleging that statute violates Equal Protection Clause need not show that discriminatory purpose is express or appears on statute's face; rather, invidious discriminatory purpose may often be inferred from totality of relevant facts, including evidence that statute's impact falls more heavily on one group than another, statute's historical background, and specific sequence of events leading up to statute's adoption. U.S. Const. Amend. 14.

Cases that cite this headnote

[27] Constitutional Law
Gerrymandering in general

To establish equal protection violation, plaintiff in partisan gerrymandering case cannot satisfy discriminatory intent requirement simply by proving that redistricting body intended to rely on political data or to take into account partisan considerations; rather, plaintiff must show that redistricting body intended to apply partisan classifications in invidious manner or in way unrelated to any legitimate legislative objective. U.S. Const. Amend. 14.

Cases that cite this headnote

[28] Constitutional Law
Gerrymandering in general

Plaintiff in partisan gerrymandering case satisfies discriminatory purpose or intent requirement for equal protection claim by introducing evidence establishing that state redistricting body acted with intent to subordinate adherents of one political party and entrench rival party in power. U.S. Const. Amend. 14.

Cases that cite this headnote

[29] Constitutional Law
Gerrymandering in general

United States
Equality of representation and discrimination;Voting Rights Act

North Carolina's congressional redistricting plan had discriminatory intent of burdening representational rights of non-Republican voters, in support of finding that plan was partisan gerrymander systematically diluting voting strength of non-Republican voters statewide, in violation of Equal Protection Clause, despite state legislature's contention that it did not seek to maximize partisan advantage, and adhered to some traditional redistricting criteria, such as compactness, contiguity, and equal population; Republicans had exclusive

control over plan's drawing and enactment, legislative process departed from normal procedural sequence, plan was drafted with express intent of entrenching Republican supermajority in North Carolina's congressional delegation for remainder of decade, two empirical analyses demonstrated that pro-Republican partisan advantage achieved by plan could not be explained by General Assembly's legitimate redistricting objectives, "Partisan Advantage" criterion used by legislature to develop plan expressly sought to carry forward partisan advantage obtained by Republicans under prior unconstitutional plan, compelling evidence indicated that legislature did seek to maximally burden voters who were likely to support non-Republican candidates, and plan did conform to all traditional redistricting principles. U.S. Const. Amend. 14.

Cases that cite this headnote

[30] Constitutional Law

Gerrymandering in general

To meet discriminatory effects requirement, Equal Protection Clause demands that partisan gerrymandering plaintiff show that challenged districting plan subordinates one political party's interests and entrenches rival party in power. U.S. Const. Amend. 14.

Cases that cite this headnote

[31] Constitutional Law

Gerrymandering in general

Partisan gerrymandering plaintiff proves that legislative redistricting plan subordinates interests of supporters of disfavored candidate party, in violation of Equal Protection Clause, by demonstrating that redistricting plan is biased against such individuals. U.S. Const. Amend. 14.

Cases that cite this headnote

[32] Constitutional Law

Gerrymandering in general

To establish that legislative redistricting plan has effect of entrenching one political party in power throughout decade, partisan gerrymandering plaintiff asserting equal protection claim must show that districting plan's bias towards favored party is likely to persist in subsequent elections such that elected representative from favored party will not feel need to be responsive to constituents who support disfavored party. U.S. Const. Amend. 14.

Cases that cite this headnote

[33] Constitutional Law

Gerrymandering in general

United States

Equality of representation and discrimination;Voting Rights Act

North Carolina's congressional redistricting plan had discriminatory effect of diluting votes of non-Republican voters and entrenching Republican control of state's congressional delegation, in support of finding that plan was unconstitutional partisan gerrymander systematically diluting voting strength of Democratic voters statewide, in violation of Equal Protection Clause; plan achieved its goal by resulting in congressional election in which North Carolina voters elected congressional delegation of 10 Republicans and 3 Democrats, even though Republican congressional candidates received only 53.22 percent of votes, Democratic candidates consistently won by larger margins than Republican candidates, Democratic candidate's margin in least Democratic district in which Democratic candidate prevailed was nearly triple that of Republican candidate's margin in least Republican district in which Republican candidate prevailed, expert statistical analyses indicated extreme partisan asymmetry, and plan's discriminatory effects were likely to persist through multiple election cycles. U.S. Const. Amend. 14.

Cases that cite this headnote

[34] **Constitutional Law**
Equality of representation; discrimination

Equal Protection Clause does not entitle supporters of particular political party to representation in state's congressional delegation in proportion to their statewide vote share. U.S. Const. Amend. 14.

Cases that cite this headnote

[35] **Constitutional Law**
Gerrymandering in general

United States
Equality of representation and discrimination;Voting Rights Act

Discriminatory effects of North Carolina's congressional redistricting plan were not justified by legitimate state districting interest or neutral explanation, and thus plan was unconstitutional partisan gerrymander in violation of Equal Protection Clause, despite Republican legislators' contentions that North Carolina's political geography exhibited natural packing of Democratic voters into urban centers, that plan sought to protect incumbent, that and Republican candidates' success under plan was attributable to advantages associated with incumbency, where it would have been more likely that voters would have elected Democratic candidates if plan had not repeatedly divided naturally occurring Democratic clusters, and expert simulation analyses found that natural packing of Democratic voters and state's interest in avoiding pairing incumbents did not explain plan's partisan effects. U.S. Const. Amend. 14.

Cases that cite this headnote

[36] **Constitutional Law**
Redistricting and reapportionment

Partisan gerrymandering implicates First Amendment rights because political belief and association constitute core of those activities protected by First Amendment. U.S. Const. Amend. 1.

Cases that cite this headnote

[37] **Constitutional Law**
Political Rights and Discrimination

Constitutional Law
Voting rights and suffrage in general

First Amendment protects right of individuals to associate for advancement of political beliefs, and right of qualified voters, regardless of their political persuasion, to cast their votes effectively. U.S. Const. Amend. 1.

Cases that cite this headnote

[38] **Constitutional Law**
Redistricting and reapportionment

By favoring one set of political beliefs over another, partisan gerrymanders implicate First Amendment prohibition on viewpoint discrimination. U.S. Const. Amend. 1.

Cases that cite this headnote

[39] **Constitutional Law**
Viewpoint or idea discrimination

First Amendment prohibits government from favoring or disfavoring particular viewpoints, and, therefore, government must abstain from regulating speech when speaker's specific motivating ideology or opinion or perspective is rationale for restriction. U.S. Const. Amend. 1.

Cases that cite this headnote

[40] **Constitutional Law**
Viewpoint or idea discrimination

Test for viewpoint discrimination under First Amendment is whether—within relevant subject category—government has singled out subset of messages for disfavor based on views expressed. U.S. Const. Amend. 1.

Cases that cite this headnote

[41] **Constitutional Law**
Freedom of speech, expression, and press
Constitutional Law
Viewpoint or idea discrimination

Viewpoint discrimination is presumptively unconstitutional, and therefore subject to strict scrutiny under First Amendment. U.S. Const. Amend. 1.

Cases that cite this headnote

[42] **Constitutional Law**
Redistricting and reapportionment

By seeking to dilute electoral speech of supporters of disfavored parties or candidates, partisan gerrymandering runs afoul of First Amendment's prohibition on laws that disfavor particular group or class of speakers. U.S. Const. Amend. 1.

Cases that cite this headnote

[43] **Constitutional Law**
Redistricting and reapportionment

When, as is case with partisan gerrymander, restriction on one group of speakers suggests attempt to give one side of debatable public question advantage in expressing its views to people, First Amendment is plainly offended. U.S. Const. Amend. 1.

Cases that cite this headnote

[44] **Constitutional Law**
Redistricting and reapportionment

By disfavoring group of voters based on their prior votes and political association, partisan gerrymandering implicates First Amendment's prohibition on burdening or penalizing individuals for engaging in protected speech. U.S. Const. Amend. 1.

Cases that cite this headnote

[45] **Constitutional Law**
Redistricting and reapportionment

Partisan gerrymandering implicates First Amendment precedent dealing with electoral regulations that have potential to burden political speech or association. U.S. Const. Amend. 1.

Cases that cite this headnote

[46] **Constitutional Law**
Elections in general

Court considering challenge to state election law must weigh character and magnitude of asserted injury to rights protected by First and Fourteenth Amendments that plaintiff seeks to vindicate against precise interests put forward by state as justifications for burden imposed by its rule, taking into consideration extent to which those interests make it necessary to burden plaintiff's rights. U.S. Const. Amends. 1, 14.

Cases that cite this headnote

[47] **Constitutional Law**
Elections in general

Election regulations that impose severe burden on First Amendment associational rights are subject to strict scrutiny, but if statute imposes only modest burdens, then state's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions. U.S. Const. Amend. 1.

Cases that cite this headnote

[48] **Constitutional Law**
Elections in general
Constitutional Law
Elections, voting, or ballot access in general
Election Law
State legislatures
Election Law
In general;power to regulate qualifications

In exercising their powers over elections and in setting qualifications for voters, states may not infringe upon basic constitutional protections, including enacting election laws that so impinge upon freedom of association as to run afoul of First and Fourteenth Amendments. U.S. Const. Amends. 1, 14.

Cases that cite this headnote

[49] **Constitutional Law**
Redistricting and reapportionment
Constitutional Law
Redistricting and reapportionment
United States
Equality of representation and discrimination;Voting Rights Act

North Carolina's congressional redistricting plan's partisan favoritism excluded it from class of politically neutral electoral regulations that passed First Amendment muster, where state legislature used political data—individuals' votes in previous elections—to draw district lines to dilute votes of individuals likely to support non-Republican candidates, thereby imposing burdens on such individuals based on their past political speech and association. U.S. Const. Amend. 1.

Cases that cite this headnote

[50] **Constitutional Law**
Redistricting and reapportionment
Constitutional Law
Redistricting and reapportionment

To establish First Amendment partisan gerrymandering claim, plaintiffs must prove that: (1) challenged districting plan was intended to favor or disfavor individuals or entities that support particular candidate or political party, (2) districting plan burdened political speech or associational rights of such individuals or entities, and (3) causal relationship existed between governmental actor's discriminatory motivation and First Amendment burdens imposed by districting plan. U.S. Const. Amend. 1.

Cases that cite this headnote

[51] **Constitutional Law**
Retaliation in general

In a First Amendment retaliation case, plaintiff must show causal connection between defendant's retaliatory animus and subsequent injury in any sort of retaliation action—i.e., that her protected First Amendment activities were motivating factor behind challenged retaliatory action. U.S. Const. Amend. 1.

Cases that cite this headnote

[52] **Constitutional Law**
Redistricting and reapportionment
Constitutional Law
Redistricting and reapportionment
United States
Equality of representation and discrimination;Voting Rights Act

North Carolina's congressional redistricting plan had discriminatory intent of burdening representational rights of non-Republican voters, in support of finding that plan was partisan gerrymander systematically diluting voting strength of non-Republican voters statewide, in violation of non-Republican voters' First Amendment free speech and associational rights, despite state legislature's contention that it did not seek to maximize partisan advantage, and adhered to some traditional redistricting criteria, such as compactness, contiguity, and equal population; Republicans had exclusive control over plan's drawing and enactment, legislative process departed from normal procedural sequence, plan was drafted with express intent of entrenching Republican supermajority in North Carolina's congressional delegation for remainder of decade, two empirical analyses demonstrated that pro-Republican partisan advantage achieved by plan could not be explained by General Assembly's legitimate redistricting objectives, "Partisan Advantage" criterion

used by legislature to develop plan expressly sought to carry forward partisan advantage obtained by Republicans under prior unconstitutional plan, compelling evidence indicated that legislature did seek to maximally burden voters who were likely to support non-Republican candidates, and plan did conform to all traditional redistricting principles. U.S. Const. Amend. 1.

Cases that cite this headnote

[53] Constitutional Law
First Amendment in General

To constitute actionable First Amendment burden, chilling effect or adverse impact must be more than de minimis. U.S. Const. Amend. 1.

Cases that cite this headnote

[54] Constitutional Law
Freedom of Speech, Expression, and Press

Governmental action "chills" speech if it is likely to deter person of ordinary firmness from exercise of First Amendment rights. U.S. Const. Amend. 1.

Cases that cite this headnote

[55] Constitutional Law
Freedom of Speech, Expression, and Press

Claimant need not show she ceased First Amendment free expression activities altogether to demonstrate injury in fact. U.S. Const. Amend. 1.

Cases that cite this headnote

[56] Constitutional Law
Redistricting and reapportionment
Constitutional Law
Redistricting and reapportionment
United States
Equality of representation and discrimination;Voting Rights Act

North Carolina's congressional redistricting plan had chilling effect on reasonable non-Republican individuals' and entities' First Amendment activities, as required to support of finding that plan violated those parties' First Amendment political speech and associational rights, even though plan did not prohibit disfavored party's supporters and candidates from engaging in political speech or association, in light of evidence that many voters felt that their votes did not count, that voters and advocacy organizations elected not to participate in congressional races because they believed they could not have impact, that candidates in non-competitive districts did not need to reach out to voters who did not belong to their party, and that Democratic party had difficulty in raising funds and recruiting candidates. U.S. Const. Amend. 1.

Cases that cite this headnote

[57] Constitutional Law
Redistricting and reapportionment
Constitutional Law
Redistricting and reapportionment

Vote dilution—intentional diminishment of electoral power of supporters of disfavored party and enhancement of electoral power of supporters of favored party—constitutes actionable adverse effect on political speech and associational rights. U.S. Const. Amend. 1.

Cases that cite this headnote

[58] Election Law
Reapportionment in general

Just as government may not altruistically equalize relative ability of individuals and groups to influence outcome of elections, neither may government invidiously amplify one group of citizens' speech and reduce that of all other citizens in order to influence outcome of elections.

Cases that cite this headnote

[59] **Constitutional Law**
Redistricting and reapportionment
United States
Equality of representation and discrimination;Voting Rights Act

When legislature draws congressional districting plan designed to enhance electoral power of voters likely to support candidates of favored party and districting plan achieves that intended goal by electing more Representatives from favored party than would have prevailed under unbiased plan, then legislature has violated First Amendment by enhancing favored party's relative voice in Congress, at expense of viewpoint of supporters of disfavored parties. U.S. Const. Amend. 1.

Cases that cite this headnote

[60] **Constitutional Law**
Political parties or organizations in general
Constitutional Law
Elections, voting, or ballot access in general

Even slight burden on political party, individual voter, or discrete class of voters can violate First Amendment if not supported by justification of commensurate magnitude. U.S. Const. Amend. 1.

Cases that cite this headnote

[61] **United States**
Relation to state law;preemption

Because right to elect Representatives to Congress arose from Constitution itself, states have no reserved or sovereign authority to adopt laws or regulations governing congressional elections.

Cases that cite this headnote

[62] **United States**
Relation to state law;preemption

Unless Elections Clause or another constitutional provision delegates to states authority to impose particular type of election law or regulation, such power does not exist. U.S. Const. art. 1, § 4, cl. 1.

Cases that cite this headnote

[63] **United States**
Relation to state law;preemption

Elections Clause empowers states to promulgate regulations designed to ensure that elections are fair and honest and that some sort of order rather than chaos accompanies democratic processes. U.S. Const. art. 1, § 4, cl. 1.

Cases that cite this headnote

[64] **Election Law**
State legislatures
Election Law
In general;power to regulate qualifications

In exercising their powers of supervision over elections and in setting qualifications for voters, states may not infringe upon basic constitutional protections. U.S. Const. art. 1, § 4, cl. 1.

Cases that cite this headnote

[65] **United States**
Relation to state law;preemption

States' authority under Elections Clause extends only to neutral provisions as to time, place, and manner of elections. U.S. Const. art. 1, § 4, cl. 1.

Cases that cite this headnote

[66] **United States**
Equality of representation and discrimination;Voting Rights Act

United States

Relation to state law;preemption

North Carolina's congressional redistricting plan, which was manipulated by state legislature to subordinate interests of non-Republican candidates and their supporters and entrench Republican candidates in power, was not neutral or fair procedural regulation, and thus exceeded state legislature's delegated authority under Elections Clause. U.S. Const. art. 1, § 4, cl. 1.

Cases that cite this headnote

[67] Constitutional Law

Boundaries of political subdivisions, consideration of

United States

Equality of representation and discrimination;Voting Rights Act

United States

Relation to state law;preemption

North Carolina's congressional redistricting plan's favoring of Republican candidates and their supporters and disfavoring of non-Republican candidates and their supporters violated Elections Clause by infringing upon basic constitutional protections, where plan violated Equal Protection Clause because it reflected successful, and unjustified, effort by state legislature to subordinate interests of non-Republican voters and entrench Republican representatives in power, and was intentional, and successful, effort to burden speech and associational rights of supporters of non-Republican candidates, in violation of First Amendment. U.S. Const. art. 1, § 4, cl. 1; U.S. Const. Amends. 1, 14.

Cases that cite this headnote

[68] United States

Equality of representation and discrimination;Voting Rights Act

North Carolina's congressional redistricting plan, which was partisan gerrymander manipulated by state legislature to subordinate interests of non-Republican candidates and their supporters and entrench Republican candidates in power, violated Constitution's grant of authority to "the People" to elect their representatives. U.S. Const. art. 1, § 2.

Cases that cite this headnote

[69] Election Law

Reapportionment in general

Absent unusual circumstances, such as where impending election is imminent and state's election machinery is already in progress, courts should take appropriate action to insure that no further elections are conducted under invalid redistricting plan.

Cases that cite this headnote

[70] Injunction

Redistricting and reapportionment

North Carolina was enjoined from conducting any further elections using congressional redistricting plan that was manipulated by state legislature to subordinate interests of non-Republican candidates and their supporters and entrench Republican candidates in power, in violation of Equal Protection Clause, First Amendment, and Article I, where general election remained many months away, and next election cycle had not yet formally begun. U.S. Const. Amends. 1, 14; U.S. Const. art. 1, §§ 2, 4, cl. 1.

Cases that cite this headnote

[71] United States

Judicial review and enforcement

As general rule, once federal court concludes that state districting plan violates Constitution or federal law, it should afford reasonable opportunity for legislature to meet constitutional requirements by adopting substitute measure, rather than devising its own plan.

Cases that cite this headnote

[72] United States
Judicial review and enforcement

North Carolina's General Assembly was entitled to second opportunity to draw constitutional congressional districting plan after its plan was invalidated as unconstitutional partisan gerrymander, even though state's previous plan had been invalidated as racial gerrymander, where, at time that General Assembly drew plan, court had not established legal standard for adjudicating partisan gerrymandering claims.

Cases that cite this headnote

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Before WYNN, Circuit Judge, and OSTEEN, JR., District Judge, and BRITT, Senior District Judge.

Opinion

Circuit Judge Wynn wrote the majority opinion in which Senior District Judge Britt concurred. District Judge Osteen, Jr., wrote a separate opinion concurring in part and dissenting in part.

MEMORANDUM OPINION

WYNN, Circuit Judge:

***1** In these consolidated cases, two groups of Plaintiffs allege that North Carolina's 2016 Congressional Redistricting Plan (the "2016 Plan") constitutes a partisan gerrymander in violation of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and Article I, Sections 2 and 4 of the Constitution. Legislative Defendants [1] do not dispute that the General Assembly intended for the 2016 Plan to favor supporters of Republican candidates and disfavor supporters of non-Republican candidates. Nor could they. The Republican-controlled North Carolina General Assembly expressly directed the legislators and consultant responsible for drawing the 2016 Plan to rely on "political data"—past election results specifying whether, and to what extent, particular voting districts had favored Republican or Democratic candidates, and therefore were likely to do so in the future—to draw a districting plan that would ensure Republican candidates would prevail in the vast majority of the state's congressional districts. Ex. 1007.

Legislative Defendants also do not argue—and have never argued—that the 2016 Plan's intentional disfavoring of supporters of non-Republican candidates advances *any* democratic, constitutional, or public interest. Nor could they. Neither the Supreme Court nor any lower court has recognized any such interest furthered by partisan gerrymandering—"the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, —— U.S. ——, 135 S.Ct. 2652, 2658, 192 L.Ed.2d 704 (2015). And, as further detailed below, partisan gerrymandering runs contrary to numerous fundamental democratic principles and individual rights enshrined in the Constitution.

Rather than seeking to advance any democratic or constitutional interest, the state legislator responsible for drawing the 2016 Plan said he drew the map to advantage Republican candidates because he "think[s] electing Republicans is better than electing Democrats." Ex. 1016, at 34:21–23. But that is not a choice the Constitution allows legislative mapdrawers to make. Rather, "the core principle of [our] republican government [is] that the voters should choose their representatives,

not the other way around." *Ariz. State Leg.*, 135 S.Ct. at 2677 (internal quotation marks omitted). Accordingly, and as further explained below, we conclude that Plaintiffs prevail on all of their constitutional claims. [2]

I.

A.

***2** Over the last 30 years, North Carolina voters repeatedly have asked state and federal courts to pass judgment on the constitutionality of the congressional districting plans drawn by their state legislators. The first such challenge involved a redistricting plan adopted by the North Carolina General Assembly after the 1990 census, which increased the size of North Carolina's congressional delegation from 11 to 12 members. *See Shaw v. Reno* (*Shaw I*), 509 U.S. 630, 633–34, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993). When the General Assembly set out to redraw the state's congressional districts to incorporate the new seat, the Department of Justice, pursuant to its "max-black" policy, pushed for the creation of a second majority-black district to augment, it maintained, the representation of the state's African–American voters in Congress. *Id.* at 635, 113 S.Ct. 2816. In response, the General Assembly prepared a revised district map that included the majority-black First and Twelfth Districts (the "1992 Plan"). *Id.*

Several dozen North Carolina voters, most of whom were Republican, challenged the 1992 Plan as a partisan gerrymander, in violation of the Equal Protection Clause, the First Amendment, and Article I, Section 2 of the United States Constitution. *Pope v. Blue*, 809 F.Supp. 392, 394–95, 397–98 (W.D.N.C. 1992), *aff'd* 506 U.S. 801, 113 S.Ct. 30, 121 L.Ed.2d 3 (1992). A divided three-judge panel dismissed the action, holding that the plaintiffs failed to adequately allege that the redistricting plan had a legally cognizable "discriminatory effect" on any "identifiable [political] group," under the standard set forth in the Supreme Court's decision in *Davis v. Bandemer*, 478 U.S. 109, 127, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986) (plurality op.). *Pope*, 809 F.Supp. at 397.

Separately, a group of North Carolina voters challenged the 1992 Plan as a racial gerrymander, in violation of the Equal Protection Clause. *Shaw I*, 509 U.S. at 636–37, 113 S.Ct. 2816. After several years of litigation, the Supreme Court held that the General Assembly's use of race as the predominant factor in drawing the second majority-black district in the 1992 Plan violated the Equal Protection Clause, and enjoined the use of that district in future elections. *Shaw v. Hunt* (*Shaw II*), 517 U.S. 899, 905–18, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996). In 1997, a politically divided General Assembly enacted a remedial plan expected to elect six Republican and six Democratic Representatives, rendering each party's share of the state's congressional delegation proportional to its share of the statewide vote in the most recent congressional election. *Cromartie v. Hunt*, 133 F.Supp.2d 407, 412–13 (E.D.N.C. 2000), *rev'd sub nom. Easley v. Cromartie*, 532 U.S. 234, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001); *id.* at 423–24 (Thornburg, J., dissenting). In 2001, after several more years of litigation, the Supreme Court approved that remedial plan. *See Easley*, 532 U.S. 234, 121 S.Ct. 1452, 149 L.Ed.2d 430 (holding that three-judge panel's finding that race constituted the predominant motivation in redrawing remedial districts was not supported by substantial evidence).

Just as litigation regarding the 1992 Plan came to an end, the results of the 2000 census entitled North Carolina to another seat in Congress, and the General Assembly again set out to redraw the state's congressional districts to include the additional seat. The resulting plan, which was adopted in 2001 (the "2001 Plan"), was used in each of the State's congressional elections between 2001 and 2010. In all but one of these elections, the party receiving more statewide votes for their candidates for the House of Representatives also won a majority of the seats in North Carolina's congressional delegation (the only exception being the 2010 election, in which Republicans won 54 percent of votes statewide but only 6 of the 13 seats). Exs. 1021–25. Although the 2001 Plan did not include any majority-black districts, black voters in the First and Twelfth Districts were consistently successful in electing their preferred candidates. *Harris v. McCrory*, 159 F.Supp.3d 600, 606–07 (M.D.N.C. 2016), *aff'd sub nom. Cooper v. Harris*, —— U.S. ——, 137 S.Ct. 1455, 197 L.Ed.2d 837 (2017). Unlike the 1992 Plan, the 2001 Plan did not generate significant federal litigation. *Id.* at 607.

B.

***3** In 2010, for the first time in more than a century, North Carolina voters elected Republican majorities in both the North Carolina Senate and the North Carolina House of Representatives, giving Republicans exclusive control over the decennial congressional redistricting process.[3] *See id.* at 607. The House of Representatives and Senate each established redistricting committees, which were jointly responsible for preparing a proposed congressional redistricting plan. *Id.* Representative David Lewis, in his capacity as the senior chair of the House Redistricting Committee, and Senator Robert Rucho, in his capacity as senior chair of the Senate Redistricting Committee, were responsible for developing the proposed redistricting plan. *Id.*

Through private counsel, the committees engaged Dr. Thomas Hofeller, who had previously worked as the redistricting coordinator for the Republican National Committee, to draw the new congressional districting plan. *Id.* Concurrent with his work on the 2011 North Carolina congressional redistricting plan, Dr. Hofeller also served on a "redistricting team" established as part of the Republican State Leadership Committee's ("RSLC") Redistricting Majority Project, commonly referred to as "REDMAP." Ex. 2015, at ¶ 13. According to RSLC, REDMAP sought to elect Republican candidates to state legislatures so that Republicans would control such legislatures' redistricting efforts and thereby "solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade." *Id.* at ¶ 10. With regard to North Carolina, in particular, REDMAP sought to "[s]trengthen Republican redistricting power by flipping [state legislative] chambers from Democrat to Republican control." Ex. 2020.

Representative Lewis and Senator Rucho, both of whom are Republican, orally instructed Dr. Hofeller regarding the criteria he should follow in drawing the new districting plan. Dep. of Thomas B. Hofeller ("Hofeller Dep.") 20:7–19, Jan. 24, 2017, ECF Nos. 101–34, 110–1. According to Dr. Hofeller, Representative Lewis and Senator Rucho's "primar[y] goal" in drawing the new districts was "to create as many districts as possible in which GOP candidates would be able to successfully compete for office." *Id.* at 123:1–7.

In accordance with Representative Lewis and Senator Rucho's instructions, Dr. Hofeller testified that he sought "to minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate." *Id.* at 127:19–22. In order to minimize the electoral opportunities of Democratic candidates, Dr. Hofeller used the results of past statewide elections to predict whether a particular precinct or portion of a precinct was likely to vote for a Republican or Democratic congressional candidate in future elections. *See id.* at 132:22–134:13, 159:20–160:12. According to Dr. Hofeller, "past voting behavior," as reflected in "past election results," is "the best predictor of future election success." Ex. 2037. Past election data have become "the industry standard" for predicting the partisan performance of a districting plan, he explained, because "as more and more voters ... register non-partisan or independent," party registration data have decreased in predictive value. *Id.*

Using past election data to "draw maps that were more favorable to Republican candidates," Dr. Hofeller moved district lines "to weaken Democratic strength in Districts 7, 8, and 11 ... by concentrating Democratic voting strength in Districts 1, 4, and 12." Ex. 2043, at 33–34; *see also* Hofeller Dep. 116:19–117:25 ("The General Assembly's goal [in 2011] was to increase Republican voting strength in New Districts 2, 3, 6, 7, and 13. This could only be accomplished by placing all the strong Democratic [census voting districts ("VTDs")] in either New Districts 1 or 4."). Dr. Hofeller conceded that, by doing so, the 2011 Plan "diminished ... [t]he[ ] opportunity to elect a Democratic candidate in the districts in which [he] increased Republican voting strength." Hofeller Dep. 128:17–21.

***4** Believing (incorrectly) that Section 2 of the Voting Rights Act required the creation of majority-black districts "where possible," Representative Lewis and Senator Rucho also directed Dr. Hofeller to re-establish two majority-black districts in the state. *Harris*, 159 F.Supp.3d at 608. This goal worked hand-in-hand with the General Assembly's partisan objective because, as Legislative Defendants acknowledge, "race and politics are highly correlated." Ex. 2043, at ¶ 120. Thus, Dr. Hofeller drew the map to further concentrate black voters, who are more likely to vote for Democratic candidates, into the state's First and Twelfth Congressional districts, where Dr. Hofeller already was planning to concentrate Democratic voting strength. *Harris*, 159 F.Supp.3d at 607–09. As a result, the proportion of black voters in those districts increased from 47.76 percent to 52.65 percent and

from 43.77 percent to 50.66 percent, respectively. *Id.* The General Assembly enacted the 2011 Plan on July 28, 2011. *Id.* at 608.

North Carolina conducted two congressional elections using the 2011 Plan. In 2012, Republican candidates received a minority of the statewide vote (49%), Ex. 3023, but won a supermajority of the congressional seats (9 of 13), Ex. 1020. In 2014, Republican candidates received 54 percent of the statewide vote, and won 10 of the 13 congressional seats. Ex. 1019.

Meanwhile, voters living in the two majority-black districts challenged the 2011 Plan in both state and federal court, alleging that lines for the two districts constituted unconstitutional racial gerrymanders. *Harris*, 159 F.Supp.3d at 609–10. The North Carolina Supreme Court twice ruled that the 2011 Plan did not violate the state or federal constitution. *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 404, 410–11 (N.C. 2015), *vacated*, —— U.S. ——, 137 S.Ct. 2186, 198 L.Ed.2d 252 (2017) (mem.); *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (N.C. 2014), *vacated*, —— U.S. ——, 135 S.Ct. 1843, 191 L.Ed.2d 719 (2015) (mem.). However, on February 5, 2016, a three-judge panel presiding in the U.S. District Court for the Middle District of North Carolina struck down the districts as unconstitutional racial gerrymanders and enjoined their use in future elections. *Harris*, 159 F.Supp.3d at 627.

With both chambers of the North Carolina General Assembly still controlled by Republicans, Representative Lewis and Senator Rucho again took charge of drawing the remedial districting plan. On February 6, 2016, Representative Lewis decided to again engage Dr. Hofeller to draw the remedial plan. Dep. of Rep. David Lewis ("Lewis Dep.") 44:2–4, Jan. 26, 2017, ECF Nos. 101–33, 108–3, 110–3, 110–4; *see also* Ex. 4061. Soon thereafter, Representative Lewis spoke with Dr. Hofeller over the phone regarding the drawing of the new plan. Lewis Dep. 44:12–24; Ex. 4061. Even before he spoke with Representative Lewis, Dr. Hofeller had begun working on a remedial plan using redistricting software and data on his personal computer. Hofeller Dep. 130:2–9.

On February 9, 2016, Representative Lewis and Senator Rucho met with Dr. Hofeller at his home and provided him with oral instructions regarding the criteria he should follow in drawing the remedial plan. Ex. 4061; Lewis Dep. 48:19–49:7; Dep. of Sen. Robert Rucho ("Rucho Dep.") 170:13–170:17, Jan. 25, 2017, ECF Nos. 101–32, 110–5. Once again, Representative Lewis and Senator Rucho did not reduce their instructions to Dr. Hofeller to writing. Lewis. Dep. 60:1–13. In addition to directing Dr. Hofeller to remedy the racial gerrymander, Representative Lewis and Senator Rucho again directed Dr. Hofeller to use political data—precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008—in drawing the remedial plan. Ex. 2043, at ¶ 38; Lewis Dep. 162:24–163:7; Hofeller Dep. 100:3–102:5, 180:10–16. Representative Lewis and Senator Rucho further instructed Dr. Hofeller that he should use that political data to draw a map that would maintain the existing partisan makeup of the state's congressional delegation, which, as elected under the racially gerrymandered plan, included 10 Republicans and 3 Democrats. Ex. 2043, at ¶ 38; Lewis Dep. 162:24–163:7; Hofeller Dep. 175:19–23, 178:14–20, 188:19–190:2.

***5** With these instructions, Dr. Hofeller continued to prepare draft redistricting plans on his personal computer. To achieve Representative Lewis and Senator Rucho's partisan objectives—and in accordance with his belief that "past voting data" serve as the best predictor of future election results—Dr. Hofeller drew the draft plans using an aggregate variable he created to predict partisan performance. For each census block, the variable compared the sum of the votes cast for Republican candidates in seven statewide races occurring between 2008 and 2014 with the sum of the average total number of votes cast for Democratic and Republican candidates in those same races. Exs. 1017, 2002, 2039, 2043 at ¶¶ 18, 47, 49, 50; Dep. of Thomas Hofeller, vol. II ("Hofeller Dep. II") 262:21–24, Feb. 10, 2017, ECF No. 110–2. Dr. Hofeller testified that he used the averaged results from the seven elections so as "to get a pretty good cross section of what the past vote had been," Hofeller Dep. 212:16–213:9, and "[t]o give [him] an indication of the two-party partisan characteristics of VTDs," Hofeller Dep. II 267:5–6. Dr. Hofeller explained that "he had drawn numerous plans in the state of North Carolina over decades," and in his "experience[,] ... the underlying political nature of the precincts in the state does not change no matter what race you use to analyze it." Ex. 2045, at 525:6–10; Hofeller Dep. at 149:5–18. "So once a precinct is found to be a strong Democratic precinct, it's probably going to act as a strong Democratic precinct in every subsequent election. The same would be true for

Republican precincts." Ex. 2045, at 525:14–17; *see also* Hofeller Dep. II at 274:9–12 ("[I]ndividual VTDs tend to carry ... the same characteristics through a string of elections.").

When he drew district lines, Dr. Hofeller displayed his partisanship variable on his computer screen by color-coding counties, VTDs, or precincts to reflect their partisan performance. Ex. 5116, at ¶ 8, fig.1; Hofeller Dep. 103:5–105:24; Hofeller Dep. II 267:18–278:4. Dr. Hofeller would use the partisanship variable to assign a VTD "to one congressional district or another," Hofeller Dep. 106:23–107:1, 132:14–20, and "as a partial guide" in deciding whether and where to split VTDs or counties, *id.* at 203:4–5; Hofeller Dep. II at 267:10–17. In assigning a county, VTD, or precinct to a particular district, Dr. Hofeller also sought to preserve the "core" constituency of the districts in the 2011 Plan. Ex. 5001, at ¶ 31. Using his partisanship variable—and in accordance with his effort to preserve the "cores" of the districts in the 2011 Plan—Dr. Hofeller drew, for example, the Fourth and Twelfth Districts to be "predominantly Democratic," as those districts had been under the 2011 Plan. Hofeller Dep. 192:7–12. After drawing a draft plan, Dr. Hofeller also would use his seven-election variable to assess the partisan performance of the plan on a district-by-district basis and as a whole. *Id.* at 247:18–23; Hofeller Dep. II 283:15–19, 284:20–285:4. Dr. Hofeller then would convey his assessment of the partisan performance of each district to Representative Lewis. Hofeller Dep. II 290:17–25.

The following day, February 10, 2016, Dr. Hofeller met with Representative Lewis and Senator Rucho and showed them several draft redistricting plans. Rucho Dep. 31:16–31:18, 37:7–37:8. "Nearly every time" he reviewed Dr. Hofeller's draft maps, Representative Lewis assessed the plans' partisan performance using the results from North Carolina's 2014 Senate race between Senator Thom Tillis and former Senator Kay Hagan. Lewis Dep. 63:9–64:17. Representative Lewis visited Dr. Hofeller's house several more times over the next few days to review additional draft remedial plans. On either February 12 or February 13, Dr. Hofeller presented the near-final 2016 Plan to Representative Lewis, which Representative Lewis found acceptable. *Id.* at 77:7–20.

On February 12, 2016, the leadership of the North Carolina General Assembly appointed Representative Lewis and Senator Rucho as co-chairs of a newly formed Joint Select Committee on Congressional Redistricting (the "Committee"), comprised of 25 Republican and 12 Democratic legislators, to draw the remedial district plan. Ex. 2009. On February 15, 2016, the co-Chairs held a public hearing on the redistricting effort. Ex. 1004. Dr. Hofeller did not attend the public hearing. Rucho Dep. 55:4–6. The Committee also solicited written comments regarding the redistricting efforts on its website. *Id.* at 55:10–23. Dr. Hofeller was not apprised of any of the comments made at the public hearing or in the written submissions. *Id.* at 55:4–56:13. Because Dr. Hofeller finished drawing the 2016 Plan before the public hearing and the opening of the window for members of the public to submit written comments, Hofeller Dep. 177:9–21, the 2016 Plan did not reflect any public input.

***6** On February 16, 2016—after Dr. Hofeller, at Representative Lewis and Senator Rucho's direction, had completed drawing the remedial maps, *id.*; Ex. 5001, at ¶ 33—the Committee met for the first time. At that meeting, Representative Lewis and Senator Rucho proposed the following criteria to govern the drawing of the remedial districts:

> Equal Population: The Committee will use the 2010 federal decennial census data as the sole basis of population for the establishment of districts in the 2016 Contingent Congressional Plan. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.
>
> Contiguity: Congressional districts shall be comprised of contiguous territory. Contiguity by water is sufficient.
>
> Political Data: The only data other than population data to be used to construct congressional districts shall be election results in statewide contests since January 1, 2008, not including the last two presidential contests. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts ("VTDs") should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.
>
> Partisan Advantage: The partisan makeup of the congressional delegation under the enacted plan is

10 Republicans and 3 Democrats. The Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan to maintain the current partisan makeup of North Carolina's congressional delegation.

Twelfth District: The current General Assembly inherited the configuration of the Twelfth District from past General Assemblies. This configuration was retained because the district had already been heavily litigated over the past two decades and ultimately approved by the courts. The Harris court has criticized the shape of the Twelfth District citing its "serpentine" nature. In light of this, the Committee shall construct districts in the 2016 Contingent Congressional Plan that eliminate the current configuration of the Twelfth District.

Compactness: In light of the Harris court's criticism of the compactness of the First and Twelfth Districts, the Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan that improve the compactness of the current districts and keep more counties and VTDs whole as compared to the current enacted plan. Division of counties shall only be made for reasons of equalizing population, consideration of incumbency and political impact. Reasonable efforts shall be made not to divide a county into more than two districts.

Incumbency: Candidates for Congress are not required by law to reside in a district they seek to represent. However, reasonable efforts shall be made to ensure that incumbent members of Congress are not paired with another incumbent in one of the new districts constructed in the 2016 Contingent Congressional Plan.

Ex. 1007. No other criteria were discussed by the Committee or in legislative debate on the 2016 Plan.

Representative Lewis explained the relationship between the "Political Data" and "Partisan Advantage" criteria as follows: the Partisan Advantage criterion "contemplate[s] looking at the political data ... and as you draw the lines, if you're trying to give a partisan advantage, you would want to draw lines so that more of the whole VTDs voted for the Republican on the ballot than they did the Democrat." Ex. 1005, at 57:10–16. And he further explained that "to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage." *Id.* at 54. Representative Lewis "acknowledge[d] freely that this would be a political gerrymander," which he maintained was "not against the law." *Id.* at 48:4–6.

***7** Democratic state Senator Floyd McKissick, Jr., objected to the "Partisan Advantage" criterion, stating that "ingrain[ing]" the 10–3 advantage in favor of Republicans was not "fair, reasonable, [or] balanced" because, as recently as 2012, Democratic congressional candidates had received more votes on a statewide basis than Republican candidates. *Id.* at 49:16–50:5, 50:14–22. In response, Representative Lewis said that he "propose[d] that [the Committee] draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because [he] d[id] not believe it[would be] possible to draw a map with 11 Republicans and 2 Democrats." *Id.* at 50:7–10. Democratic Committee members also expressed concern that the Partisan Advantage criterion would "bake in partisan advantage that was achieved through the use of unconstitutional maps." *Id.* at 62:1–3. In response, Representative Lewis again reiterated that "the goal" of the criterion "is to elect 10 Republicans and 3 Democrats." *Id.* at 62:18–19.

That same day, Committee members adopted, on a bipartisan basis, the Equal Population, Contiguity, Twelfth District, and Incumbency criteria. *Id.* at 14:16–18:3, 21:9–24:18, 91:17–94:17, 95:15–98:20. The remaining two criteria—Political Data and Partisan Advantage—were adopted on party-line votes. *Id.* at 43:21–47:5, 67:2–69:23. Additionally, the Committee authorized the chairmen to engage a consultant to assist the Committee's Republican leadership in drawing the remedial plan. Ex. 2003.

Also on February 16, 2016, after receiving authorization to hire a redistricting consultant, Representative Lewis and Senator Rucho sent Dr. Hofeller an engagement letter, which Dr. Hofeller signed that same day. Ex. 2003. Upon his engagement, Dr. Hofeller downloaded the 2016 Plan, which he had completed several days earlier, from his personal computer onto a legislative computer. Lewis Dep. 138:6–8; Ex. 1009, at 45:7–45:11; Ex. 1014, at 21:10–21:24; Ex. 4061. Democratic Committee members were not allowed to consult with Dr. Hofeller nor were they allowed access to the state computer systems to which he downloaded the 2016 Plan. Ex. 1011, at 36:9–20; Ex. 1014, at 44:23–45:15; Ex. 2008. According to Representative Lewis, Senator Rucho, and Dr. Hofeller, the 2016 Plan

adhered to the Committee's Partisan Advantage and Political Data criteria. Ex. 1014, at 36:25–37:6; Ex. 1016, at 37:3–7; Hofeller Dep. 129:14–15.

The following day, Representative Lewis and Senator Rucho presented the 2016 Plan to the Committee. Ex. 1008. As part of the presentation, Representative Lewis provided Committee members with spreadsheets showing the partisan performance of the proposed districts in twenty previous statewide elections. Ex. 1017. Representative Lewis stated that he and Senator Rucho believed that the 2016 Plan "will produce an opportunity to elect ten Republican members of Congress," but it was "a weaker map than the [2011 Plan]" from the perspective of Partisan Advantage. Ex. 1008, at 12:3–7. The Committee approved the 2016 Plan by party-line vote. *Id.* at 67:10–72:8.

On February 19, 2016, the North Carolina House of Representatives debated the 2016 Plan. During that debate, Representative Lewis further explained the rationale behind the Partisan Advantage criterion, stating: "I think electing Republicans is better than electing Democrats. So I drew this map to help foster what I think is better for the country." Ex. 1016, at 34:21–23. Following that debate, the North Carolina Senate and North Carolina House of Representatives approved the 2016 Plan, with one slight modification, [4] on February 18 and February 19, respectively, in both cases by party-line votes. Ex. 1011, at 110:13–22; Ex. 1016, at 81:6–16.

***8** The 2016 Plan splits 13 counties and 12 precincts. Ex. 5023. Under several statistical measures of compactness, the districts created by the 2016 Plan are, on average, more compact than the districts created by the 2011 Plan. Ex. 5048. The 2016 Plan paired 2 of the 13 incumbents elected under the unconstitutional 2011 Plan. Ex. 2012, at 15–19. Ten of the thirteen districts in the 2016 Plan retained at least 50 percent of their constituency under the 2011 Plan. Ex. 5001, tbl.1.

The *Harris* plaintiffs filed objections to the Plan with the three-judge court presiding over the racial gerrymandering case. *Harris v. McCrory*, No. 1:13-cv-949, 2016 WL 3129213, at *1 (M.D.N.C. June 2, 2016). Among those objections, the *Harris* plaintiffs asked the court to reject the 2016 Plan as an unconstitutional partisan gerrymander. *Id.* at *2. Noting that the Supreme Court had not agreed to a standard for adjudicating partisan gerrymandering claims and that the "plaintiffs ha[d] not provided the Court with a 'suitable standard' " for evaluating such claims, the court rejected the partisan gerrymandering objection "as presented." *Id.* at *3 (quoting *Ariz. State Leg.*, 135 S.Ct. at 2658). The court twice made clear, however, that its "denial of plaintiffs' objections *does not* constitute or imply an endorsement of, or foreclose any additional challenges to, the [2016 Plan]." *Id.* at *1, *3 (emphasis added).

In November 2016, North Carolina conducted congressional elections using the 2016 Plan. In accordance with the objective of the Partisan Advantage criterion, Republican candidates prevailed in 10 of the 13 (76.92%) congressional districts established by the 2016 Plan. Ex. 1018. Republican candidates received 53.22 percent of the statewide vote. Ex. 3022.

C.

On August 5, 2016, Common Cause, the North Carolina Democratic Party, and fourteen North Carolina voters [5] (collectively, "Common Cause Plaintiffs"), filed a complaint alleging that the 2016 Plan constituted a partisan gerrymander. Compl., *Common Cause v. Rucho*, No. 1:16–cv–1026, Aug. 5, 2016, ECF No. 1. The League of Women Voters of North Carolina (the "League") and twelve North Carolina voters [6] (collectively, "League Plaintiffs," and together with Common Cause Plaintiffs, "Plaintiffs") filed their partisan gerrymandering action on September 22, 2016. Compl., *League of Women Voters of N.C. v. Rucho*, No. 1:16–cv–1164, Sept. 22, 2016, ECF No. 1. Both parties named as defendants Legislative Defendants; A. Grant Whitney, Jr., in his official capacity as Chairman of the North Carolina State Board of Elections (the "Board of Elections"); the Board of Elections; and the State of North Carolina (collectively, with Chairman Whitney and the Board of Elections, "State Defendants," and with Legislative Defendants, "Defendants").

In their operative complaints, both Common Cause Plaintiffs and League Plaintiffs allege that the 2016 Plan violates the Equal Protection Clause, by intentionally diluting the electoral strength of individuals who previously opposed, or were likely to oppose, Republican candidates, and the First Amendment, by intentionally burdening and retaliating against supporters of non-

Republican candidates on the basis of their political beliefs and association. First Am. Compl. for Decl. J. and Inj. Relief ("Common Cause Compl.") ¶¶ 25–45, *Common Cause v. Rucho*, No. 16–cv–1026, Sept. 7, 2016, ECF No. 12; Am. Compl. ("League Compl.") ¶¶ 69–83, *League of Women Voters of N.C. v. Rucho*, No. 16–cv–1164, Feb. 10, 2017, ECF No. 41. Common Clause Plaintiffs further allege that the 2016 Plan violates Article I, Section 2 of the United States Constitution, which provides that members of the House of Representatives will be chosen "by the People of the several States," by usurping the right of "the People" to select their preferred candidates for Congress, and Article I, Section 4, by exceeding the States' delegated authority to determine "the Times, Places and Manner of holding Elections" for members of Congress. Common Cause Compl. ¶¶ 46–54.

***9** On February 7, 2017, this Court consolidated the two actions for purposes of discovery and trial. Order, Feb. 7, 2017, ECF No. 41. Three days later, League Plaintiffs amended their complaint to reflect the results of the 2016 congressional election conducted under the 2016 Plan and empirical analyses of those results.

On February 21, 2017, Defendants moved to dismiss both complaints under Federal Rule of Civil Procedure 12(b)(6), principally asserting that (1) *Pope v. Blue*, 809 F.Supp. 392 (W.D.N.C. 1992), which the Supreme Court summarily affirmed, 506 U.S. 801, 113 S.Ct. 30, 121 L.Ed.2d 3 (1992), required dismissal of Plaintiffs' actions, and (2) the Supreme Court's splintered opinions regarding the justiciability of—and, to the extent such claims are justiciable, the legal framework for—partisan gerrymandering claims foreclosed Plaintiffs' claims. Mot. to Dismiss for Failure to State a Claim, Feb. 21, 2017, ECF No. 45. In a memorandum opinion and order entered March 3, 2017, this Court denied Defendants' motions to dismiss. *Common Cause v. Rucho*, 240 F.Supp.3d 376 (M.D.N.C. 2017); Order, March 3, 2017, ECF No. 51.

Beginning on October 16, 2017, this Court held a four-day trial, during which the Common Cause Plaintiffs, League Plaintiffs, and Legislative Defendants introduced evidence and presented testimony from their expert witnesses. Although counsel for the State Defendants attended trial, they did not participate and took no position as to how this Court should resolve the case.

In post-trial briefing, League Plaintiffs set forth a single, three-part test for determining whether a state congressional redistricting plan violates the First and Fourteenth Amendments. Under their proposed test, a plaintiff alleging that a state redistricting body engaged in unconstitutional partisan gerrymandering bears the burden of proving: (1) that the redistricting body enacted the challenged plan with the intent of discriminating against voters who support candidates of a disfavored party and (2) that the challenged plan had a "large and durable" discriminatory effect on such voters. League of Women Voters Pls.' Post–Trial Br. ("League Br.") 3, Nov. 6, 2017, ECF No. 113. If the plaintiff makes such a showing, then the burden shifts to the governmental defendant to provide (3) a legitimate, non-partisan justification for the plan's discriminatory effect. *Id.*

League Plaintiffs point to the Political Advantage and Partisan Advantage criteria and the chairmen's official explanations of those criteria as evidence of the General Assembly's intent to discriminate against voters who support Democratic candidates. *Id.* at 7–8. To establish the plan's discriminatory effect, League Plaintiffs introduced expert analyses of the 2016 Plan's alleged "partisan asymmetry" to establish that the plan makes it substantially more difficult for voters who favor Democratic candidates to translate their votes into representation, and that this substantial difficulty is likely to persist throughout the life of the 2016 Plan. *Id.* at 12–16. Finally, League Plaintiffs assert that Legislative Defendants have failed to provide any evidence of a legitimate justification for the 2016 Plan's alleged partisan asymmetry, such as the state's political geography or other legitimate redistricting goals. *Id.* at 21–24.

By contrast, Common Cause Plaintiffs advance distinct legal frameworks for their First Amendment, Equal Protection, and Article I claims. Regarding the First Amendment, Common Cause Plaintiffs assert that the 2016 Plan's disfavoring of voters who previously opposed Republican candidates or associated with non-Republican candidates or parties amounts to viewpoint discrimination and passes constitutional muster only if narrowly tailored to serve a compelling state interest. Common Cause Pls.' Post–Trial Br. ("Common Cause Br.") 5–8, Nov. 6, 2017, ECF No. 116. According to Common Cause Plaintiffs, the General Assembly's use of individuals' past voting history to assign such individuals to congressional districts with the purpose

of advantaging Republican candidates on a statewide basis constitutes evidence of viewpoint discrimination. *Id.* at 7–15. Common Clause Plaintiffs further contend that Legislative Defendants have provided no compelling interest justifying such viewpoint discrimination. *Id.* at 9.

***10** Turning to the Equal Protection Clause, Common Cause Plaintiffs suggest that the level of scrutiny to which a court must subject a redistricting plan turns on the degree to which the redistricting body intended to pursue partisan advantage. *Id.* at 15–17. According to Common Cause Plaintiffs, the General Assembly predominantly pursued partisan advantage in drawing the 2016 Plan, and therefore this Court should apply strict scrutiny, upholding the plan only if Legislative Defendants show that the plan was narrowly tailored to advance a compelling state interest. *Id.* As proof of the General Assembly's predominant intent to burden voters who support non-Republican candidates, Common Cause Plaintiffs point to the Political Data and Partisan Advantage criteria, the chairmen's explanations of the purpose behind those criteria, and expert analyses showing that the 2016 Plan is an "*extreme statistical outlier*" with regard to its pro-Republican tilt relative to thousands of other simulated districting plans conforming to non-partisan districting principles. *Id.* at 17. Common Cause Plaintiffs further argue that, even if this Court finds that the General Assembly did not draw the 2016 Plan with a predominantly partisan motive, the plan nonetheless fails to pass constitutional muster under intermediate or rational basis scrutiny. *Id.* at 18–19.

Finally, Common Cause Plaintiffs allege that the 2016 Plan exceeds the General Assembly's delegated authority under Article I, Section 4—commonly referred to as the "Elections Clause"—because it amounts to an unconstitutional effort " 'to dictate electoral outcomes' " and " 'to favor ... a class of candidates.' " *Id.* at 20–21 (quoting *Cook v. Gralike*, 531 U.S. 510, 523–24, 121 S.Ct. 1029, 149 L.Ed.2d 44 (2001)). And Common Clause Plaintiffs further assert that the 2016 Plan violates Article I, Section 2 because it gives voters who favor Republican candidates "a greater voice in choosing a Congressman" than voters who favor candidates put forward by other parties. *Id.* at 22–23 (quoting *Wesberry v. Sanders*, 376 U.S. 1, 13–14, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964)).

In response, Legislative Defendants first argue that both sets of Plaintiffs lack Article III standing to assert any of their claims. Legislative Defs.' Post–Trial Br. ("Leg. Defs.' Br.") 12, Nov. 6, 2017, ECF No. 115. Legislative Defendants next contend that, even if Plaintiffs have standing, neither set of Plaintiffs has offered a judicially manageable standard under *any* constitutional provision for evaluating a partisan gerrymandering claim, and, therefore, that Plaintiffs' actions must be dismissed as raising nonjusticiable political questions. *Id.* at 9. To that end, Legislative Defendants criticize Plaintiffs' expert statistical analyses, in particular, on grounds that such analyses are "a smorgasbord of alleged 'social science' theories" that fail to answer what Legislative Defendants see as the fundamental question in partisan gerrymandering cases: "how much politics is too much politics in redistricting?" *Id.* at 2, 9–11. As to the merits, Legislative Defendants assert that the 2016 Plan was not a "partisan gerrymander"—as they define that term—because, among other reasons, (1) the General Assembly did not try to "maximize" the number of Republican seats, and (2) the districts created by the 2016 Plan conform to a number of traditional redistricting principles such as compactness, contiguity, and adherence to county lines. *Id.* at 3, 7–8.

For the reasons that follow, we reject Legislative Defendants' standing and justiciability arguments. We further conclude that the 2016 Plan violates the Equal Protection Clause because the General Assembly enacted the plan with the intent of discriminating against voters who favored non-Republican candidates, the plan has had and likely will continue to have that effect, and no legitimate state interest justifies the 2016 Plan's discriminatory partisan effect. We also conclude that the 2016 Plan violates the First Amendment by unjustifiably discriminating against voters based on their previous political expression and affiliation. Finally, we hold that the 2016 Plan violates Article I by exceeding the scope of the General Assembly's delegated authority to enact congressional election regulations and interfering with the right of "the People" to choose their Representatives.

II.

***11** Before addressing the merits of Plaintiffs' claims, we first address Legislative Defendants' threshold standing and justiciability arguments. As detailed below, we conclude that Plaintiffs have standing to raise statewide and district-by-district partisan gerrymandering

challenges to the 2016 Plan. We further conclude that Plaintiffs' partisan gerrymandering claims are not barred by the political question doctrine, either in theory or as proven.

A.

[1] **[2]** Article III's "case" or "controversy" requirement demands that a plaintiff demonstrate standing—that the plaintiff has "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). To establish standing, a plaintiff first must demonstrate "an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, ... and (b) 'actual or imminent, not conjectural or hypothetical.' " *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (citations and some internal quotation marks omitted). "Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.' " *Id.* (alterations in original) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976)). "Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' " *Id.* at 561, 112 S.Ct. 2130 (quoting *Simon*, 426 U.S. at 41–42, 96 S.Ct. 1917). Plaintiffs bear the burden of establishing standing. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006).

Plaintiffs comprise individual North Carolina voters; two non-profit organizations concerned with promoting open, honest, and accountable government and fostering education and engagement in elections; and the North Carolina Democratic Party. These individuals and entities assert a variety of injury types: vote dilution; elected representatives who, with victory all-but assured, are less willing to engage in democratic dialogue and meaningfully consider contrary viewpoints; statewide chilling of association and discourse through decreased democratic participation, fundraising, and candidate recruitment; increased statewide costs for voter education and candidate recruitment; and a statewide congressional delegation that fails to adequately reflect the interests of all North Carolina voters. League Plaintiffs—who reside in most, but not all, of the state's thirteen congressional districts—assert that these alleged injuries allow them to lodge a statewide challenge under the Equal Protection Clause and First Amendment. Common Cause Plaintiffs—who reside in all thirteen congressional districts—claim that they have standing to assert both statewide and district-by-district challenges to the 2016 Plan under the Equal Protection Clause, the First Amendment, and Article I.

Legislative Defendants do not dispute that, to the extent Plaintiffs suffered an injury-in-fact, the injury was caused by the 2016 Plan. Nor do they dispute that Plaintiffs' claimed injuries are redressable by a favorable decision of this Court. Instead, Legislative Defendants argue that all Plaintiffs lack standing for three reasons: (1) a plaintiff may not rely on statewide standing to challenge an entire congressional redistricting plan as a partisan gerrymander; (2) individual Plaintiffs lack standing to lodge both statewide and district-by-district challenges because they have not suffered constitutionally cognizable injuries-in-fact; and (3) organizational Plaintiffs lack standing because no individual member has standing and no organizational Plaintiff suffered a concrete harm attributable to the 2016 Plan. We reject each argument.

1.

***12** **[3]** Two strands of Supreme Court precedent dealing with standing in gerrymandering cases under the Equal Protection Clause potentially bear on whether a partisan gerrymandering plaintiff has standing to raise a statewide challenge to a congressional redistricting plan. In racial gerrymandering cases, a plaintiff lacks standing to challenge a districting plan on a statewide basis. *Ala. Leg. Black Caucus*, 135 S.Ct. at 1265. The Supreme Court explained that only those voters who "live[ ] in the *district* attacked"—as opposed to voters "who live[ ] elsewhere in the State"—"normally [have] standing to pursue a racial gerrymandering claim" because "the harms that underlie a racial gerrymandering claim ... are personal." *Id.* "They include being personally subjected to a racial classification, as well as being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group." *Id.* (internal

citation, quotation marks, and alterations omitted). A racial gerrymander, therefore, "reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls." *Shaw I*, 509 U.S. at 647, 113 S.Ct. 2816. Such harms "threaten[ ] to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility." *United States v. Hays*, 515 U.S. 737, 744, 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995). Put differently, the harm associated with a racial gerrymander is that the state redistricting body drew district lines that "embody stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution." *Miller v. Johnson*, 515 U.S. 900, 912, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995) (quoting *Metro Broad., Inc. v. F.C.C.*, 497 U.S. 547, 604, 110 S.Ct. 2997, 111 L.Ed.2d 445 (1990) (O'Connor, J., dissenting)).

[4] **[5]** By contrast, in one-person, one-vote cases—in which a plaintiff in an overpopulated district alleges that she is injured because the districting plan dilutes her vote relative to voters in underpopulated districts—the plaintiff may challenge the districting plan on a statewide basis.[7] *See, e.g.*, *Wesberry*, 376 U.S. at 7, 84 S.Ct. 526 (permitting voters in a single overpopulated district to raise one-person, one-vote challenge to districting plan as a whole); *Gray v. Sanders*, 372 U.S. 368, 370, 375, 83 S.Ct. 801, 9 L.Ed.2d 821 (1963) (holding that plaintiff, "who [wa]s qualified to vote in primary and general elections in Fulton County, Georgia," had standing to lodge statewide challenge to Georgia's "county unit system as a basis for counting votes in a Democratic primary for the nomination of a United States Senator and statewide officers"); *Baker*, 369 U.S. at 187, 205–07, 82 S.Ct. 691 (holding that plaintiffs, who lived in five Tennessee counties, had standing to challenge districting plan's "apportioning [of] the members of the General Assembly among the State's 95 counties" because "voters who allege facts showing disadvantage to themselves as individuals have standing to sue"). Like racial gerrymandering cases, the Supreme Court's approach to standing in one-person, one-vote cases reflects the type of harms associated with malapportionment. The injury in a malapportionment case is "a gross disproportion of representation to voting population." *Baker*, 369 U.S. at 207, 82 S.Ct. 691. "[T]his classification disfavors the voters in [overpopulated districts], placing them in a position of constitutionally unjustified inequality vis-à-vis voters in irrationally favored [districts]." *Id.* at 207–08, 82 S.Ct. 691. Put differently, in a one-person, one-vote case, a plaintiff who resides in an overpopulated district suffers an injury because her vote is diluted relative to other voters in the jurisdiction. *Reynolds v. Sims*, 377 U.S. 533, 568, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) ("[A]n individual's right to vote ... is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living [i]n other parts ...."). Importantly, in the context of one-person, one-vote challenges to a congressional districting plan, like the 2016 Plan, the Supreme Court has found that malapportionment causes structural harms, as well as individual harms, by contravening the legislative structure and republican principles put in place by the Framers. *Wesberry*, 376 U.S. at 15–18, 84 S.Ct. 526.

Legislative Defendants assert that this Court should follow the Supreme Court's racial gerrymandering cases and deny Plaintiffs statewide standing for two reasons: (1) partisan gerrymandering cases involve the "same representational harms" as racial gerrymandering cases, and (2) "race-based claims allege a more serious violation of the Constitution than do partisan-based claims." Leg. Defs.' Proposed Findings of Fact and Conclusion of Law ("Leg. Defs.' FOF") 112–13, Nov. 6, 2017, ECF No. 114. As to the first argument, we agree that some of the injuries flowing from partisan gerrymandering are analogous to the injuries attributable to a racial gerrymander. For example, a plaintiff subject to an invidious partisan gerrymander is harmed by "being represented by a legislator who believes his primary obligation is to represent only the members of a particular ... group." *Ala. Leg. Black Caucus,* —— U.S. ——, 135 S.Ct. 1257, 1265, 191 L.Ed.2d 314 (2015) (internal quotation marks omitted). But the injuries attributable to partisan gerrymanders also meaningfully differ from those associated with racial gerrymanders. For instance, partisan gerrymandering plaintiffs do not suffer the same stigmatic and dignitary harms as those suffered by racial gerrymandering plaintiffs. And partisan gerrymandering plaintiffs endure the same dilutionary harms that permit voters residing in overpopulated districts to lodge statewide challenges in one-person, one-vote cases. *See Davis v. Bandemer*, 478 U.S. 109, 114, 132–33, 143, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986)

(plurality op.) (treating partisan gerrymandering as a form of "unconstitutional vote dilution"); *id.* at 173, 106 S.Ct. 2797 (Powell, J., concurring in part and dissenting in part) (same). Additionally, like one-person, one-vote challenges to congressional districting plans, partisan gerrymanders of congressional districts produce structural harms as well as personal harms. *See infra* Parts II.B.1, V.

***13** **[6]** As to the relative severity of racial and partisan gerrymandering claims, the Fourteenth Amendment no doubt prohibits unjustified reliance on race in districting. *Shaw I*, 509 U.S. at 657, 113 S.Ct. 2816. But both the Constitution and statutes enacted by Congress permit state redistricting bodies to consider race in certain circumstances. For example, Section 2(b) of the Voting Rights Act, enacted pursuant to Congress's authority to enforce the Fifteenth Amendment, requires states to ensure that members of a protected class do not have "less opportunity than other members of the electorate to ... elect representatives of their choice." 52 U.S.C. § 10301(b); *see also Voinovich v. Quilter*, 507 U.S. 146, 154, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993). To that end, a state may rely on race in drawing district lines when it has "good reasons to think that it would transgress the [Voting Rights] Act if it did *not* draw race-based district lines." *Cooper*, 137 S.Ct. at 1464 (internal quotation marks omitted). Even when the Voting Rights Act does not compel states to take into account race in drawing district lines, the Supreme Court has recognized that states have an important "interest in eradicating the effects of past discrimination," including through their redistricting plans. *Shaw I*, 509 U.S. at 656, 113 S.Ct. 2816. Accordingly, state legislatures involved in the "delicate task" of redistricting, *see Miller*, 515 U.S. at 905, 115 S.Ct. 2475, can—and, in certain circumstances, should—consider the impact of a redistricting plan on minority groups, including groups of voters previously subject to race-based discrimination. And in appropriate circumstances, states may rely on race-conscious redistricting to *advance* the interests of members of minority groups subject to past discrimination.

Whereas both Congress and the Supreme Court have recognized that the consideration of race in redistricting can advance constitutionally cognizable interests, Legislative Defendants offer no argument or authority, nor have we found any, identifying any legitimate state interest, let alone a constitutionally cognizable state interest, served by partisan gerrymandering—"the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Leg.*, 135 S.Ct. at 2658. Because race-conscious redistricting, in appropriate circumstances, can advance legitimate governmental objectives, and because partisan gerrymandering does not serve *any* such objective, we reject Legislative Defendants' assertion "that race-based claims allege a more serious violation of the Constitution than do partisan-based claims." Leg. Defs.' FOF 113–14.

[7] Given the differences between partisan gerrymandering and racial gerrymandering claims—and the similarities between the harms associated with partisan gerrymandering and malapportionment, particularly in the case of congressional districts—we conclude that the Supreme Court's approach to standing in one-person, one-vote cases should guide the standing inquiry in partisan gerrymandering cases.[8] Under that approach, we find that both groups of Plaintiffs, some of whom reside in districts in which their votes have been diluted, have standing to challenge the 2016 Plan as a whole. *Accord Whitford v. Gill*, 218 F.Supp.3d 837, 927–28 (W.D. Wis. 2016) (three-judge panel) (concluding that partisan gerrymandering plaintiffs, who resided in a small minority of the districts established by a redistricting plan, had standing to challenge the redistricting plan as a whole), *appeal docketed*, 137 S.Ct. 2289 (2017).

***14** The injuries associated with Plaintiffs' First Amendment and Article I claims also support statewide standing. Partisan gerrymandering implicates the "the First Amendment interest of not burdening or penalizing citizens because of their participation in the electoral process, their voting history, their association with a political party, or their expression of political views." *Vieth v. Jubelirer*, 541 U.S. 267, 314, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004) (Kennedy, J., concurring in the judgment). Among other types of "burden[s]" on First Amendment rights, partisan gerrymandering "*purposely* dilut[es] the weight of certain citizens' votes to make it more difficult for them to achieve electoral success *because of* the political views they have expressed through their voting histories and party affiliations." *Shapiro v. McManus*, 203 F.Supp.3d 579, 595 (D. Md. 2016) (three-judge panel). To that end, the First Amendment injury associated with partisan gerrymandering echoes the harms attributable to malapportionment. *See id.* (explaining that "while a State can dilute the value of a citizen's vote by placing him in an overpopulated district, a State can also

dilute the value of his vote by placing him in a particular district because he will be outnumbered by those who have affiliated with a rival political party. In each case, the weight of the viewpoint communicated by his vote is 'debased' " (quoting *Bd. of Estimate of City of N.Y. v. Morris*, 489 U.S. 688, 693–94, 109 S.Ct. 1433, 103 L.Ed.2d 717 (1989)). Partisan gerrymandering also implicates additional, non-district-specific First Amendment harms, such as infringing on the right to associate with likeminded voters to fund, attract, and elect candidates of choice. *See Williams v. Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) (explaining that "[w]e have repeatedly held that freedom of association is protected by the First Amendment," including "the right of individuals to associate for the advancement of political beliefs"). Because the First Amendment harms attributable to partisan gerrymandering are analogous to one-person, one-vote claims and are not district-specific, we conclude that partisan gerrymandering claims under the First Amendment need not be asserted on a district-by-district basis.

The injuries underlying Common Cause Plaintiffs' Article I claims—which allege that the 2016 Plan exceeds the General Assembly's authority under the Elections Clause and usurps the power of "the People" to elect their representatives—also do not stop at a single district's lines. Rather, like the malapportionment of congressional districts, these injuries reflect structural violations amenable to statewide standing. *Cf. U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 808–09, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1995) ("The Convention debates make clear that the Framers' overriding concern was the potential for States' abuse of the power to set the 'Times, Places and Manner' of elections."); *id.* at 809, 115 S.Ct. 1842 ("As Hamilton later noted: 'Nothing can be more evident than that an exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy."). Indeed, malapportionment challenges to congressional districting plans, which permit statewide standing, are governed by Article I, Section 2, one of two Article I provisions under which Common Cause Plaintiffs seek relief. *See Wesberry*, 376 U.S. at 7–8, 84 S.Ct. 526.

Our conclusion that Plaintiffs may rely on statewide standing in pursuing their partisan gerrymandering claims also finds support in the facts and circumstances surrounding the General Assembly's drawing and enactment of the 2016 Plan. As reflected in the later-adopted Partisan Advantage criterion, Representative Lewis and Senator Rucho instructed Dr. Hofeller to draw a plan that would elect ten Republicans and three Democrats. Ex. 2043, at ¶ 38; Lewis Dep. 162:24–163:7; Hofeller Dep. 175:19–23, 178:14–20, 188:19–190:2. Representative Lewis further testified that he sought to draw a plan that elected as many Republican candidates as feasible. Ex. 1005, at 50:7–10. To achieve that statewide goal, the 2016 Plan sacrificed a number of district-specific objectives, such as preventing the pairing of all incumbents elected under the 2011 Plan, respecting the lines of political subdivisions, and further improving on the compactness of the districts in the 2011 Plan. *See* Ex. 2012, at 15–19; *infra* Part III.A.2.b. Accordingly, in drawing the 2016 Plan, the General Assembly sought to achieve a statewide partisan effect. In such circumstances, we find it appropriate to view the 2016 Plan as inflicting a statewide partisan injury. [9]

2.

***15** **[8]** Legislative Defendants next argue that Plaintiffs, at least one of whom resides in each of the thirteen districts created by the 2016 Plan, have not suffered the injuries-in-fact necessary to assert either statewide or district-by-district challenges to the plan. In particular, Legislative Defendants maintain that none of the Plaintiffs have suffered an injury-in-fact because: (1) certain Plaintiffs conceded they were able to elect the representative of their choice and (2) certain other Plaintiffs reside in districts that since 2002 have elected only a single political party's candidates. [10] We disagree.

To begin, the 2016 Plan diluted the votes of those Plaintiffs who supported non-Republican candidates and reside in the ten districts that the General Assembly drew to elect Republican candidates. That dilution constitutes a legally cognizable injury-in-fact. *See Whitford*, 218 F.Supp.3d at 927 (finding evidence that "the electoral influence of plaintiffs and other Democratic voters statewide has been unfairly and disproportionately reduced" by partisan gerrymander proved the plaintiffs' injury-in-fact).

Other Plaintiffs in the groups identified by Legislative Defendants testified to legally cognizable non-dilutionary injuries. For example, Plaintiffs in both groups testified to

decreased ability to mobilize their party's base, to attract volunteers, and to recruit strong candidates. *See, e.g.*, Dep. of Elizabeth Evans ("Evans Dep.") 16:1–12, April 7, 2017, ECF No. 101–7; Dep. of John West Gresham ("Gresham Dep.") 38:5–18, March 24, 2017, ECF No. 101–25; Dep. of Melzer Aaron Morgan, Jr. ("Morgan Dep.") 22:16–19, 23:20–25, April 7, 2017, ECF No. 101–16; Palmer Dep. 27:19–23, 50:10–23; Dep. of Gunther Peck ("Peck Dep.") 27:8–24, 34:6–20, March 22, 2017, ECF No. 101–3; Dep. of Cheryl Taft ("C. Taft Dep.") 17:6–11, March 30, 2017, ECF No. 101–11; Dep. of Aaron J. Sarver ("Sarver Dep.") 26:9–27:23, 34:8–15, 37:24–39:4, April 10, 2017, ECF No. 101–23; Dep. of Russell Grady Walker, Jr. ("Walker Dep.") 29:17–30:8, April 7, 2017, ECF No. 101–27. Plaintiffs who live in districts that have consistently elected candidates from the same party also testified to voters feeling frozen out of the democratic process because "their vote never counts," which in turn affects voter mobilization and educational opportunities and the ability to attract strong candidates. *See, e.g.*, Dep. of Elliott J. Feldman ("Feldman Dep.") 27:8–22, March 24, 2017, ECF No. 101–20; Dep. of William Halsey Freeman ("Freeman Dep.") 17:17–18:10, April 7, 2017, ECF No. 101–14; Fox Dep. 29:21–30:7, 51:18–52:9; Morgan Dep. 23:2–8; Dep. of John J. Quinn, III ("Quinn Dep.") 38:1–39:5, April 10, 2017, ECF No. 101–22; C. Taft Dep. 17:6–11. The Supreme Court has recognized that these types of harms constitute cognizable injuries. *See, e.g.*, *Anderson v. Celebrezze*, 460 U.S. 780, 792, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) (finding that plaintiff was injured by election law that made "[v]olunteers ... more difficult to recruit and retain, media publicity and campaign contributions ... more difficult to secure, and voters ... less interested in the campaign").

***16** In sum, Plaintiffs' dilutionary and non-dilutionary injuries are sufficient to ensure the sharply adversarial presentation of issues the standing doctrine contemplates. Indeed, if partisan gerrymandering "does produce a legally cognizable injury, the[se] [Plaintiffs] are among those who have sustained it. They are asserting 'a plain, direct and adequate interest in maintaining the effectiveness of their votes.' " *Baker*, 369 U.S. at 208, 82 S.Ct. 691 (quoting *Coleman v. Miller*, 307 U.S. 433, 438, 59 S.Ct. 972, 83 L.Ed. 1385 (1939)).

[9] **[10]** Finally, Legislative Defendants argue that all of the organizational Plaintiffs lack standing. Specifically, Legislative Defendants assert that no organizational Plaintiff can rely on its members for standing nor has any organizational Plaintiff suffered injury in its own right sufficient to confer standing. However, our analysis above forecloses Legislative Defendants' arguments that individual members of the Plaintiff organizations lack standing. [11] *See supra* Part II.A.2. And even if Plaintiff organizations could not rely on their members' injuries to establish standing, the Plaintiff organizations each have suffered additional costs and burdens due to the 2016 Plan sufficient to establish Article III standing.

The League, for example, seeks to educate voters regarding a fair and evenhanded democracy, which includes redistricting. Klenz Dep. 30:22–32:9. The 2016 Plan has required the League to increase those educational efforts and therefore forced the League to incur additional costs. *Id.* at 33:7–20, 59:7–60:25, 80:1–81:7. Common Cause engages in similar efforts, which in turn have required increased expenditures due to the 2016 Plan. 30(B)(6) Dep. of Common Cause by Bob Phillips ("Common Cause Dep.") 64:13–25, 66:10–22, 74:6–75:15, 149:17–150:19, April 14, 2017, ECF Nos. 101–29, 110–6. Finally, the North Carolina Democratic Party testified that the 2016 Plan has made it more difficult for the party to raise resources and to recruit candidates. *See* Goodwin Dep. 97:18–98:9. Taken together, these specific and direct harms to each organizational Plaintiff—stemming from the 2016 Plan and which would abate if this Court invalidated the 2016 Plan—are independently sufficient to confer standing on the Plaintiff organizations. *See, e.g.*, *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982) ("[T]here can be no question that the organization has suffered injury in fact.... [C]oncrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitutes far more than simply a setback to the organization's abstract social interests."); *Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) ("There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy.").

***17** * * * * *

3.

In conclusion, we find that both the individual and organizational Plaintiffs have suffered injuries-in-fact attributable to the 2016 Plan, and, based on those injuries, Plaintiffs have standing to challenge the 2016 Plan as a whole. Even absent statewide standing, because Plaintiffs reside in each of the state's thirteen districts and have all suffered injuries-in-fact, Plaintiffs, as a group, have standing to lodge district-by-district challenges to the entire 2016 Plan.

B.

Next, Legislative Defendants argue that although partisan gerrymandering claims are justiciable "in theory," Plaintiffs' specific partisan gerrymandering claims should be dismissed because, as alleged and proven, they raise nonjusticiable political questions. Leg. Defs.' FOF 93. The political question doctrine dates to Justice Marshall's opinion in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803), and rests on the principle that certain disputes are not appropriate for or amenable to resolution by the courts because they raise questions constitutionally reserved to the political branches, *id.* at 170 ("Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.").

The political question doctrine has played a central role in apportionment cases. The Supreme Court set forth its current test for determining whether a claim raises a political question in a case dealing with the justiciability of one-person, one-vote claims. *See Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). Prior to *Baker*, in *Colegrove v. Green*, 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432 (1946), several Justices took the position that certain apportionment challenges raised political questions because the Constitution expressly delegated authority over apportionment to the States, subject to the supervision of Congress, thereby leaving no place for judicial review. [12] *Id.* at 553–55, 66 S.Ct. 1198.

Baker confronted a one-person, one-vote challenge under the Equal Protection Clause to a state legislative districting plan. The Court concluded such claims were justiciable, and distinguished *Colegrove* on grounds that *Colegrove* involved a challenge under the Guaranty Clause, Article IV, Section 4, which the Court had previously held was not "the source of a constitutional standard for invalidating state action." 369 U.S. at 209–10, 223, 82 S.Ct. 691 (citing *Taylor v. Beckham*, 178 U.S. 548 (1900)). In concluding that one-person, one-vote apportionment claims are justiciable, *Baker* held that an issue poses a political question if there is:

> A textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

***18** *Id.* at 217, 82 S.Ct. 691. Applying this test, the Court concluded one-person, one-vote claims were justiciable under the Fourteenth Amendment because they involved a determination of "the consistency of state action with the Federal Constitution"—a question constitutionally assigned to the Judiciary. *Id.* at 226, 82 S.Ct. 691. The Court further emphasized that the resolution of the question was "judicially manageable" because "[j]udicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action." *Id.* The Court subsequently extended *Baker*'s justiciability holding to one-person, one-vote challenges to congressional districts under Article I, Section 2. *See Wesberry*, 376 U.S. at 5–6, 84 S.Ct. 526.

1.

In *Davis v. Bandemer*, 478 U.S. 109, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986), the Supreme Court applied the

Baker framework to partisan gerrymandering claims, holding that such claims do not raise nonjusticiable political questions, *see id.* at 123, 106 S.Ct. 2797 (plurality op.); *id.* at 161–65, 106 S.Ct. 2797 (Powell, J., concurring in part and dissenting in part). Writing for the Court, Justice White emphasized that the Court had previously concluded that one-person, one-vote and racial gerrymandering claims were justiciable, thereby establishing that apportionment claims implicating "issue[s] of representation" are justiciable. *Id.* at 124, 106 S.Ct. 2797 (plurality op.). Justice White further stated that there was no reason to believe that the "standards ... for adjudicating this political gerrymandering claim are less manageable than the standards that have been developed for racial gerrymandering claims." *Id.* at 125, 106 S.Ct. 2797. Although the Court recognized the justiciability of partisan gerrymandering claims under the Equal Protection Clause, a majority could not agree as to the substantive standard for proving such claims. *Compare id.* at 127–37, 106 S.Ct. 2797, *with id.* at 161–62, 106 S.Ct. 2797 (Powell, J., concurring in part and dissenting in part).

The Court revisited the justiciability of partisan gerrymandering claims in *Vieth v. Jubelirer*, 541 U.S. 267, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004). Conceding "the incompatibility of severe partisan gerrymanders with democratic principles," *id.* at 292, 124 S.Ct. 1769 (plurality op.), a four-justice plurality nonetheless took the position that no judicially manageable standard exists to adjudicate partisan gerrymandering claims and therefore would have reversed *Bandemer*'s holding of justiciability, *id.* at 281, 124 S.Ct. 1769. Justice Kennedy agreed with the plurality that the *Vieth* plaintiffs had failed to put forward a legally cognizable standard for evaluating partisan gerrymandering claims, therefore warranting dismissal of the action for failure to allege "a valid claim on which relief may be granted." *Id.* at 306, 313, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment). But Justice Kennedy rejected the plurality's conclusion that partisan gerrymandering claims are categorically nonjusticiable. *See id.* at 309–10, 124 S.Ct. 1769. And the remaining four Justices agreed with Justice Kennedy's refusal to reverse *Bandemer*'s justiciability holding. *Id.* at 317, 124 S.Ct. 1769 (Stevens, J., dissenting) ("[F]ive Members of the Court ... share the view that, even if these appellants are not entitled to prevail, it would be contrary to precedent and profoundly unwise to foreclose all judicial review of similar claims that might be advanced in the future."). Two years later, the Supreme Court again refused to revisit *Bandemer*'s holding that partisan gerrymandering claims are justiciable. *League of United Latin Am. Citizens v. Perry* (*LULAC*), 548 U.S. 399, 414, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006).

[11] Accordingly, under controlling Supreme Court precedent, a challenge to an alleged partisan gerrymander presents a justiciable case or controversy. *See Common Cause*, 240 F.Supp.3d at 387. For good reason.

***19** **[12]** As the Supreme Court recently held, " '[p]artisan gerrymanders ... [are incompatible] with democratic principles.' " *Ariz. State Leg.*, 135 S.Ct. at 2658 (quoting *Vieth*, 541 U.S. at 292, 124 S.Ct. 1769 (plurality op.)). That statement accords with the unanimous conclusion of the Justices in *Vieth*. *See* 541 U.S. at 292, 124 S.Ct. 1769 (plurality op.) (recognizing "the incompatibility of severe partisan gerrymanders with democratic principles"); *id.* at 312, 316–17, 124 S.Ct. 1769 (Kennedy, J., concurring) ("If a State passed an enactment that declared 'All future apportionment shall be drawn so as most to burden Party X's rights to fair and effective representation, though still in accord with one-person, one-vote principles,' we would surely conclude the Constitution had been violated."); *id.* at 326, 124 S.Ct. 1769 (Stevens, J., dissenting) ("State action that discriminates against a political minority for the sole and unadorned purpose of maximizing the power of the majority plainly violates the decisionmaker's duty to remain impartial"); *id.* at 345, 124 S.Ct. 1769 (Souter, J., dissenting) ("[T]he increasing efficiency of partisan redistricting has damaged the democratic process to a degree that our predecessors only began to imagine."); *id.* at 360, 124 S.Ct. 1769 (Breyer, J., dissenting) (holding that redistricting plan violates Constitution if it amounts to an "*unjustified* use of political factors to entrench a minority in power").

[13] **[14]** On its most fundamental level, partisan gerrymandering violates "the core principle of republican government ... that the voters should choose their representatives, not the other way around." *Ariz. State Leg.*, 135 S.Ct. at 2677 (internal quotation marks omitted); *see also Powell v. McCormack*, 395 U.S. 486, 540–41, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969) ("[T]he true principle of a republic is, that the people should choose whom they please to govern them." (quoting Alexander Hamilton in 2 Debates of the Federal Constitution 257 (J. Elliott ed. 1876))). Put differently, partisan

gerrymandering represents " 'an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good.' " *LULAC*, 548 U.S. at 456, 126 S.Ct. 2594 (Stevens, J., concurring in part and dissenting in part) (quoting *Balderas v. Texas*, Civ. Action No. 6:01CV158, App. to Juris. Statement 209a–10a, 2001 WL 36403750 (E.D. Tex. 2006)).

Partisan gerrymandering runs contrary to both the structure of the republican form of government embodied in the Constitution and fundamental individual rights preserved by the Bill of Rights. As detailed more fully below, partisan gerrymandering of congressional districts constitutes a structural violation because it insulates Representatives from having to respond to the popular will, and instead renders them responsive to state legislatures or political factions thereof. *See infra* Part V. Unlike the Senate, which, at the time of the founding, represented the interests of the States, the Framers intended for the House of Representatives to be the governmental body directly responsive to "the People." U.S. Const. art. I, § 2; *see also Wesberry*, 376 U.S. at 13, 84 S.Ct. 526 (explaining that "William Samuel Johnson of Connecticut had summed [the Great Compromise] up well: 'in one branch the people, ought to be represented; in the other, the States' "). As James Madison explained, "it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the [House of Representatives] *should have an immediate dependence on, and an intimate sympathy with, the people.*" *See* The Federalist No. 52 (James Madison), at 295 (Clinton Rossiter ed., 1999) (emphasis added). On this point, both the Federalists and Anti–Federalists agreed. *See, e.g.*, James Madison, *Notes of Debates in the Federal Convention of 1787* 39 (W. W. Norton & Co. 1987) (1787) (hereinafter "*Debates*") (reporting that George Mason "argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the government."); *id.* at 167 (reporting that James Wilson stated that he "considered the election of the first branch by the people not only as the corner Stone, but as the foundation of the fabric: and that the difference between a mediate and immediate election was immense").

***20** Emphasizing that the House of Representatives was the repository of the People's power, the Framers repeatedly expressed concern about state legislatures, or political factions thereof, interposing themselves between Representatives and the People. For example, James Madison explained that "[i]t is *essential*" that a Republican government "derive[its powers] from the great body of society, *not from an inconsiderable proportion or a favored class of it*; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic." The Federalist No. 39 (James Madison), at 209 (second emphasis added); *Debates* at 40 (reporting that James Wilson stated that "[a]ll interference between the general and local government should be obviated as much as possible"). The Framers expressed particular concern that State legislatures would seek to influence Congress by enacting electoral regulations that favored candidates aligned with, and responsive to, the interests of the legislatures, rather than the public at large. *See Debates* at 167 (reporting that Rufus King expressed concern that "the Legislatures would constantly choose men subservient to their own views as contrasted to the general interest; and that they might even devise modes of election that would be subversive of the end in view"). Surveying these and other founding-era authorities, the Supreme Court recognized that "[i]t would defeat the principle solemnly embodied in the Great Compromise ... to hold that, within the states, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others." *Wesberry*, 376 U.S. at 14, 84 S.Ct. 526. Partisan gerrymandering—drawing district lines to enhance the electoral power of voters who support a favored party and diminish the electoral power of voters who support disfavored parties—amounts to a legislative effort "to give some voters a greater voice in choosing a Congressman than others," *id.*, contrary to the republican system put in place by the Framers.

[15] **[16]** Partisan gerrymandering also runs afoul of rights that "are individual and personal in nature," *Reynolds*, 377 U.S. at 561, 84 S.Ct. 1362, because it subverts the foundational constitutional principle that the State govern "impartially"—that "the State should treat its voters as standing in the same position, regardless of their political beliefs or party affiliation." *Davis*, 478 U.S. at 166, 106 S.Ct. 2797 (Powell, J., concurring in part and dissenting in part); *see also infra* Part III. And partisan gerrymandering infringes on core political speech and associational rights by "burdening or penalizing citizens

because of their participation in the electoral process, their voting history, their association with a political party, or their expression of political views." *Vieth*, 541 U.S. at 314, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment); *see also infra* Part IV.

That partisan gerrymandering encroaches on these individual rights by undermining the right to vote—the principle vehicle through which the public secures other rights and prevents government overreach—magnifies the constitutional harm. As the Supreme Court explained in *Wesberry*, "[o]ur Constitution leaves no room for classification of people in a way that unnecessarily abridges [the right to vote]" because "[o]ther rights, even the most basic, are illusory if the right to vote is undermined." 376 U.S. at 17–18, 84 S.Ct. 526. To that end, the Supreme Court long has held that "legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation." *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4, 58 S.Ct. 778, 82 L.Ed. 1234 (1938).

A partisan gerrymander that is intended to and likely has the effect of entrenching a political party in power undermines the ability of voters to effect change when they see legislative action as infringing on their rights. And as James Madison warned, a legislature that is itself insulated by virtue of an invidious gerrymander can enact additional legislation to restrict voting rights and thereby further cement its unjustified control of the organs of both state and federal government.[13] *See Debates* at 424 ("[T]he inequality of the Representation in the Legislatures of particular States, would produce like inequality in their representation in the Natl. Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter."). That is precisely what occurred in the late Eighteenth Century when Democratic legislatures used aggressive partisan gerrymanders to secure Democratic control of the House of Representatives and then, by virtue of that control, restrict earlier federal efforts to enforce the Fifteenth Amendment in the South, thereby facilitating the return of de jure and de facto segregation. *See* Erik J. Engstrom, Partisan Gerrymandering and the Construction of American Democracy 94–121 (2013).

***21** The Constitution sharply curtails restrictions on electoral speech and the right to vote because, in our republican form of democracy, elected representatives in power have a strong incentive to enact legislation or policies that preserve their position, at the expense of public interest. As Justice Scalia explained, "[t]he first instinct of power is the retention of power, and, under a Constitution that requires periodic elections, that is best achieved by the suppression of election-time speech." *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 263, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003) (Scalia, J., concurring in part and dissenting in part). Casting a vote and associating with a political party are among the most fundamental forms of "election-time speech." *See Williams*, 393 U.S. at 30, 89 S.Ct. 5 (recognizing "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively"); *Reynolds*, 377 U.S. at 555, 84 S.Ct. 1362 ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."); Alexander Meiklejohn, *The First Amendment is an Absolute*, 1961 Sup. Ct. Rev. 245, 254 (1961) ("The revolutionary intent of the First Amendment is ... to deny to [the government] authority to abridge the freedom of the electoral power of the people."). Partisan gerrymandering is no different than legislative efforts to curtail other forms of election-time speech because in both cases "[p]oliticians have deep-seated incentives to bias translation of votes into seats." Engstrom, *supra* at 192. Accordingly, because partisan gerrymandering encroaches on individuals' right to engage in "election-time speech"—including the right to vote—allegations of partisan gerrymandering "must be carefully and meticulously scrutinized" by the judiciary. *Reynolds*, 377 U.S. at 562, 84 S.Ct. 1362.

Because partisan gerrymandering targets voting rights, the deference to the policy judgments of the political branches animating the political question doctrine is inapplicable. In *Wesberry*, the defendant state asserted that claims premised on malapportionment of congressional districts raise political questions because the Elections Clause—which empowers state "Legislatures," subject to congressional regulation, to "prescribe[ ] ... The Times, Places and Manner of holding Elections for ... Representatives"—textually commits apportionment questions to Congress and the States. 376 U.S. at 6–7, 84 S.Ct. 526. In rejecting that argument,

the Supreme Court refused to "support ... a construction [of the Elections Clause] that would immunize state congressional apportionment laws which debase a citizen's right to vote from the power of courts to protect the constitutional rights of individuals from legislative destruction, a power recognized at least since our decision in *Marbury v. Madison*." *Id.* "The right to vote is too important in our free society to be stripped of judicial protection by such an interpretation of Article I," the Court held. *Id.*

Further, "a textually demonstrable constitutional commitment" of authority to a coordinate branch provides the strongest basis for treating a claim as a political question. *Vieth*, 541 U.S. at 278, 124 S.Ct. 1769 (plurality op.) (characterizing the "textually demonstrable constitutional commitment" test as the most "importan[t] and certain[ ]" test for the existence of a political question). Given that the Supreme Court has recognized that the importance of the right to vote warrants not treating malapportionment claims as political questions, notwithstanding the alleged textual commitment of such claims in the Elections Clause, a purported lack of judicially manageable standards provides an even weaker basis for "stripp[ing] of judicial protection" the right to vote when a legislature seeks to destroy that right through partisan gerrymandering. [14] *Wesberry*, 376 U.S. at 6–7, 84 S.Ct. 526.

***22** Importantly, and contrary to Legislative Defendants' claims, the judiciary's refusal to treat alleged infringements on the right to vote—like claims of partisan gerrymandering—as political questions reflects an effort to *advance* the interests served by the political question doctrine, rather than usurp the role of the political branches. As the Supreme Court has explained, "[t]he voting rights cases, indeed, have represented the Court's efforts to strengthen the political system by assuring a higher level of fairness and responsiveness to the political processes, not the assumption of a continuing judicial review of substantive political judgments entrusted expressly to the coordinate branches of government." *Gilligan v. Morgan*, 413 U.S. 1, 11, 93 S.Ct. 2440, 37 L.Ed.2d 407 (1973). Put differently, because the judiciary jealously protects the right to vote—and thereby ensures that the People retain the means to counteract any encroachment by the political branches on substantive individual rights—the judiciary can give the political branches greater latitude to make substantive policy decisions. *See* John Hart Ely, Democracy and Distrust: A Theory of Judicial Review 102 (1980) (explaining that by "devoting itself instead to policing the mechanisms by which [our constitutional] system seeks to ensure that our elected representatives will actually represent," the judiciary "recognizes the unacceptability of the claim that appointed and life-tenured judges are better reflectors of conventional values than elected representatives").

In sum, partisan gerrymandering infringes on a variety of individual rights and does so by targeting the right to vote—the constitutional mechanism through which the People repel legislative encroachment on their rights. The Supreme Court has long recognized that when the Constitution preserves individual rights, courts have an obligation to enforce those rights. *Marbury*, 5 U.S. at 166 ("[W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy."). We find no basis to disregard that obligation here.

Notably, the State defendant in *Reynolds* made arguments against judicial oversight of state redistricting similar to those advanced by Legislative Defendants here—namely, that it is improper for courts to embroil themselves in inherently political issues and that courts lack the capability of identifying a judicially manageable standard to determine whether, and to what degree, malapportionment violates the Constitution. Rejecting each of these arguments, the Supreme Court reaffirmed the principle first recognized by Chief Justice Marshall in *Marbury*: "We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." *Reynolds*, 377 U.S. at 566, 84 S.Ct. 1362. Our oath and our office impose that same obligation here.

2.

Legislative Defendants nonetheless argue that, regardless of whether partisan gerrymandering claims are justiciable "in theory," this Court should dismiss Plaintiffs' claims as nonjusticiable because Plaintiffs have failed to put forth a "judicially manageable standard" for

resolving their claims. Leg. Defs.' Br. 2, 11, 17; Leg. Defs.' FOF 93. Legislative Defendants argue that the analytical frameworks and empirical analyses advanced by Plaintiffs fail to provide a judicially manageable standard for three reasons. First, Legislative Defendants assert that Plaintiffs' legal frameworks and expert analyses fail to address, much less resolve, what Legislative Defendants see as the fundamental question bearing on the constitutionality of partisan gerrymandering: "how much politics is too much politics in redistricting"? Leg. Defs.' Br. 2, 9–11. Second, Legislative Defendants argue that the empirical analyses on which Plaintiffs rely—which Legislative Defendants characterize as "a smorgasbord of alleged 'social science' theories"—lack any constitutional basis, and instead amount to "academically inspired proposed judicial amendments to the Constitution." *Id.* at 2, 17. Finally, Legislative Defendants maintain that allowing the judiciary to strike down a redistricting plan as a partisan gerrymander would interfere with the political branches' decision, rendered pursuant to Congress's authority under the Election Clause, to require election of representatives from single-member districts. *Id.* at 13. We reject all three arguments.

a.

***23** Legislative Defendants' assertion that any judicially manageable partisan gerrymandering framework must distinguish "reasonable" partisan gerrymandering from "too much" partisan gerrymandering rests on the premise that some degree of partisan gerrymandering—again, defined by the Supreme Court as "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power," *Ariz. State Leg.*, 135 S.Ct. at 2658—is permissible. To justify that premise, Legislative Defendants assert that (1) historical practice indicates that the Framers viewed some amount of partisan gerrymandering as constitutionally permissible and (2) the Supreme Court repeatedly has sanctioned at least some degree of partisan gerrymandering. Neither claim is correct.

As to the historical pedigree of partisan gerrymanders, Legislative Defendants, like the plurality in *Vieth*, correctly note that partisan gerrymanders date to the colonial era. *See* Leg. Defs.' Br. 17; 541 U.S. at 274, 124 S.Ct. 1769 (plurality op.). And without question, several notorious partisan gerrymanders were drawn soon after the Founding, including the "salamander"-shaped state legislative district attributed to Massachusetts Governor Elbridge Gerry in 1812 that gave rise to the term "gerrymander." *Vieth*, 541 U.S. at 274, 124 S.Ct. 1769; Engstrom, *supra* at 21 ("Partisan collisions over districting pervaded the early republic, and even had antecedents in the colonial legislatures"). State legislatures gerrymandered state legislative and congressional districts to favor one party or candidate at the expense of another in a variety of ways: through the manipulation of district lines; by using regional or state-wide, multi-member districts, as opposed to single-member districts; and, most commonly, by creating districts with unequal population. Engstrom, *supra* at 22–23.

Neither founding-era records nor historical practice, however, supports Legislative Defendants' contention that the Framers viewed some level of partisan gerrymandering as constitutionally acceptable. Rather, "the Constitution did not contemplate the rise of political parties—indeed, it was designed to discourage their emergence—let alone the modern era's highly integrated national and state parties." Richard H. Pildes, Foreword, *The Constitutionalization of Democratic Politics*, 118 Harv. L. Rev. 28, 81 (2004). Given that the Framers sought to discourage the rise of political parties, there is no basis to find, as Legislative Defendants suggest, that the Framers intended to allow elected members of a political party to draw district lines so as to undermine the electoral prospects of their opposition.

On the contrary, founding-era records reflect a concerted effort by the Framers to forestall the enactment of election regulations that would favor one party or faction at the expense of others. This concern is most evident in the Framers' debates regarding whether, and to what extent, the federal government should be empowered to displace States' authority to administer and regulate congressional elections. On the one hand, James Madison argued that "the Legislatures of the States ought not to have the uncontrouled right of regulating the times places and manner of holding elections [as i]t was impossible to foresee all the abuses that might be made of the discretionary power." *Debates* at 423. "Whenever the State Legislatures had a favorite measure to carry, they would take care so *to mould their regulations as to favor the candidates they wished to succeed*," Madison explained. *Id.* at 424 (emphasis added). Likewise, Alexander Hamilton argued that the federal government should have some

supervisory authority over the States' regulation of elections because there was no reason to believe that "it is less probable that *a predominant faction in a single State should, in order to maintain its superiority, incline to a preference of a particular class of electors*, than that a similar spirit should take possession of the representatives of thirteen States, spread over a vast region, and in several respects distinguishable from each other by a diversity of local circumstances, prejudices, and interests." The Federalist No. 61, at 342 (Alexander Hamilton) (Clinton Rossiter ed., 1999) (emphasis added).

***24** On the other hand, delegates who opposed federal intrusion on state regulation of elections saw such intrusion "as an avenue through which Congress might perpetuate itself in power or ... *institute unfair at-large voting methods in the states so as to favor particular interests*." Jamal Greene, Note, *Judging Partisan Gerrymanders Under the Elections Clause*, 114 Yale L.J. 1021, 1036 (2005) (emphasis added). Thus, although the delegates disagreed as to whether, and to what extent, to lodge authority over the regulation of congressional elections in the federal government, they were *united* in their view that the Constitution should be drafted to minimize the possibility that political bodies would adopt electoral regulations that favored particular parties or factions. *See* Note, *A New Map: Partisan Gerrymandering as a Federalism Injury*, 117 Harv. L. Rev. 1196, 1201 (2004). Significantly, delegates at the Constitutional Convention sought to design the Constitution so as to prevent Congress from being plagued by "what Madison called the 'vicious representation' in Great Britain whereby 'rotten boroughs' with few inhabitants were represented in Parliament on or almost on a par with cities of greater population." *Wesberry*, 376 U.S. at 14–15, 84 S.Ct. 526.

Notwithstanding the Framers' efforts to prevent the formation of political parties and partisan gerrymandering, the early Nineteenth Century saw the rise of political parties, and with that rise, several notable partisan gerrymanders. Engstrom *supra* 21–42. But the founding generation did not view such gerrymanders as constitutionally permissible. On the contrary, such gerrymanders were widely criticized as antidemocratic. For example, the newspaper cartoon that coined the term "Gerry–Mander" described partisan redistricting as "a grievous wound on the Constitution,—it in fact subverts and *changes our form of Government*, which ceases to be *Republican* as long as an *Aristocratic* House of Lords under the form of a Senate tyrannizes over the People, and silences and stifles the voice of the *Majority*." *The Gerry–Mander, or Essex South District Formed into a Monster!*, Salem Gazette, Apr. 2, 1813. Numerous other Nineteenth–Century partisan gerrymanders faced similar condemnation from politicians, the press, the judiciary, and the public. *See* Br. of *Amici Curiae* Historians in Supp. of Appellees at 23–34, *Gill v. Whitford*, No. 16–1161 (S.Ct. Sept. 5, 2017).

Even if founding-era practice did support Legislative Defendants' assertion that some degree of partisan gerrymandering was viewed as permissible—which it does not—long-standing, and even widespread, historical practice does not immunize governmental action from constitutional scrutiny. *See Reynolds*, 377 U.S. at 582, 84 S.Ct. 1362 (holding that malapportionment of state legislative districts violates Equal Protection Clause, notwithstanding that malapportionment was widespread in Nineteenth and Twentieth Centuries). That is particularly true when, as here, the legal bases for challenging the conduct were unavailable at the time of the Founding. *See id.* The Equal Protection Clause, which fundamentally altered the relationship between the States and the federal government, post-dates the founding era by decades. *See Fitzpatrick v. Bitzer*, 427 U.S. 445, 455, 96 S.Ct. 2666, 49 L.Ed.2d 614 (1976) ("There can be no doubt that this line of cases has sanctioned intrusions by Congress, acting under the Civil War Amendments, into the judicial, executive, and legislative spheres of autonomy previously reserved to the States."); *Libertarian Party of Va. v. Alcorn*, 826 F.3d 708, 715 (4th Cir. 2016) (Wilkinson, J.) ("Of course, the Reconstruction Amendments ... materially altered the division of labor [between the federal government and the States] established by the Framers for the regulation of elections."). Likewise, the Supreme Court did not recognize the incorporation of the First Amendment against the States through the Fourteenth Amendment until 1943. *See Murdock v. Pennsylvania*, 319 U.S. 105, 108, 63 S.Ct. 870, 87 L.Ed. 1292 (1943). And until the Reconstruction Congress adopted Section 1983, there was no basis for a plaintiff to challenge a congressional redistricting plan as a partisan gerrymander under Article I or any other federal constitutional provision. *See* The Enforcement Act of 1871, 17 Stat. 13 (1871), *codified as amended at* 42 U.S.C. § 1983.

***25** Accordingly, even if some degree of partisan gerrymandering had been acceptable during the founding era, that does not mean that the ratification of the Fourteenth Amendment and the incorporation of the First Amendment against the States did not subsequently render unconstitutional the drawing of district lines to frustrate the electoral power of supporters of a disfavored party. That is precisely what the Supreme Court concluded in holding that racial gerrymandering and malapportionment violated the Constitution, notwithstanding that both practices were widespread during the Nineteenth and early Twentieth Centuries. *See Reynolds*, 377 U.S. at 556 n.30, 567 n.43, 84 S.Ct. 1362; *Gomillion v. Lightfoot*, 364 U.S. 339, 345–46, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

Legislative Defendants' contention that the Supreme Court has sanctioned some degree of partisan gerrymandering—the drawing of district lines to undermine the electoral prospects of supporters of candidates of a disfavored party—fares no better. To be sure, the Supreme Court has recognized certain *purposes* for which a state redistricting body may take into account political data or partisan considerations in drawing district lines. For example, in appropriate circumstances, a legislature may draw district lines to avoid the pairing of incumbents. *See Karcher v. Daggett*, 462 U.S. 725, 740, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983). Likewise, the Supreme Court has held that a state redistricting body does not violate the Constitution by seeking "to create a districting plan that would achieve a rough approximation of the statewide political strengths of the Democratic and Republican Parties." *Gaffney*, 412 U.S. at 752, 93 S.Ct. 2321. And the Supreme Court has recognized that a redistricting body may draw district lines to respect political subdivisions or maintain "communities of interest." *Abrams v. Johnson*, 521 U.S. 74, 100, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997).

But the Supreme Court's acceptance of state legislatures' reliance on partisan considerations and political data for certain purposes does not establish that a state legislature may pursue *any* partisan objective, as Legislative Defendants contend. In particular, the Supreme Court has never recognized that a legislature may draw district lines for the purpose of diminishing or minimizing the voting strength of supporters of a particular party or citizens who previously voted for representatives of a particular party—the legislative action challenged here. On the contrary, the Supreme Court recently held that such efforts are "[incompatible] with democratic principles." *Ariz. State Leg.*, 135 S.Ct. at 2658 (alteration original); *see also Reynolds*, 377 U.S. at 578–79, 84 S.Ct. 1362 (condemning "[i]ndiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, [as] little more than an *open invitation to partisan gerrymandering*" (emphasis added)). And in approving the "proportionality" gerrymander in *Gaffney*, the Court expressly distinguished gerrymanders that seek "to minimize or eliminate the political strength of any group or party." [15] 412 U.S. at 754, 93 S.Ct. 2321; *see also id.* at 751, 93 S.Ct. 2321 ("A districting plan may create multimember districts perfectly acceptable under equal population standards, but invidiously discriminatory because they are employed to minimize or cancel out the voting strength of racial *or political* elements of the voting population." (emphasis added) (internal quotation marks omitted)). Likewise, the Supreme Court did not include burdening or punishing citizens for voting for candidates from an opposing party among its list of "legitimate" redistricting factors that justify deviating from population equality in congressional districts. *See Harris v. Ariz. Indep. Redistricting Comm'n*, —— U.S. ——, 136 S.Ct. 1301, 1306–07, 194 L.Ed.2d 497 (2016).

***26** **[17]** In sum, neither historical practice nor Supreme Court precedent supports Legislative Defendants' assertion that it is sometimes permissible for a state redistricting body to draw district lines for the purpose of burdening voters who supported or are likely to support a disfavored party or candidate. Because the Constitution does not authorize state redistricting bodies to engage in such partisan gerrymandering, a judicially manageable framework for evaluating partisan gerrymandering claims need not distinguish an "acceptable" level of partisan gerrymandering from "excessive" partisan gerrymandering. *Vieth*, 541 U.S. at 316, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment) (recommending against "a standard that turns on whether partisan interests in the redistricting process were excessive" because a government body is "culpable" regardless of whether it seeks to maximize its partisan advantage or "proceeds by a more subtle effort, capturing less than all the seats in each State"). Rather, the framework must distinguish partisan gerrymandering from the results of legitimate districting objectives, including those objectives that take into account political data or permissible partisan considerations. Put differently, "[a]

determination that a gerrymander violates the law must rest ... on a conclusion that [political] classifications, though generally permissible, were applied in an invidious manner or in a way unrelated to any legitimate legislative objective." *Id.* at 307, 124 S.Ct. 1769. As explained below, we conclude that Plaintiffs' proposed legal frameworks and supporting evidence do just that.

b.

Legislative Defendants next argue that the empirical analyses introduced by Plaintiffs do not offer a judicially manageable standard for adjudicating partisan gerrymandering claims, but instead are "a smorgasbord of alleged 'social science' theories" that lack any constitutional basis. Leg. Defs.' Br. 2. As detailed more fully below, Plaintiffs offer two groups of empirical analyses to support their Equal Protection and First Amendment claims. The first group of analyses relies on thousands of computer-generated districting plans that conform to most traditional redistricting criteria, including those relied on by the General Assembly in drawing the 2016 Plan. According to Plaintiffs, when these plans are evaluated using the precinct-by-precinct results of recent North Carolina elections, the 2016 Plan is an "extreme statistical outlier" with regard to the degree to which it disfavors voters who oppose Republican candidates. *See infra* Parts III.A.2.b, III.B.2.c. Plaintiffs assert that these analyses prove that the General Assembly intended to burden voters who supported non-Republican candidates and that the 2016 Plan had the effect of burdening such voters. The second group of analyses assess the 2016 Plan's "partisan symmetry"—whether the plan allows supporters of the two principal parties to translate their votes into representation with equal effectiveness. *See infra* Part III.B.2.b. According to Plaintiffs, a variety of measures of the 2016 Plan's partisan symmetry reveal that, throughout the life of the plan, supporters of non-Republican candidates will likely have a significantly more difficult time translating their votes into representation.

[18] Legislative Defendants are correct that none of these empirical analyses appear in the Constitution. But Plaintiffs need not show that a particular empirical analysis or statistical measure appears in the Constitution to establish that a judicially manageable standard exists to resolve their constitutional claims. *See, e.g.*, *Brown v. Thomson*, 462 U.S. 835, 842–43, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983) (holding that "an apportionment plan with a maximum population deviation under 10% falls within th[e] category" of "minor deviations ... from mathematical equality among state legislative districts [that] are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment," notwithstanding that the plain language of the Constitution references no such statistical threshold). Rather, Plaintiffs must identify cognizable constitutional standards to govern their claims, and provide credible *evidence* that Defendants have violated those standards. And contrary to Legislative Defendants' assertions, Plaintiffs do not seek to constitutionalize any of the empirical analyses they have put forward to support their claims, nor does this Court do so. Instead, Plaintiffs argue that these analyses provide *evidence* that the 2016 Plan violates a number of well-established constitutional standards—that the government act impartially, not infringe the right to vote, and not burden individuals based on the exercise of their rights to political speech and association.

***27** The Supreme Court long has relied on statistical and social science analyses as *evidence* that a defendant violated a standard set forth in the Constitution or federal law. In the context of the Equal Protection Clause, in particular, the Supreme Court has relied on statistical and social science evidence as proof that a government action was motivated by discriminatory intent or had a discriminatory effect—the same purposes for which Plaintiffs seek to use such evidence here. For example, in *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886), the Court held that an ordinance providing a municipal board of supervisors with the discretion to grant or withhold its consent to use wooden buildings as laundries, although neutral on its face, was administered in a manner that discriminated on the basis of national origin, *id.* at 366, 374, 6 S.Ct. 1064. As proof, the Court noted that the board withheld consent from 200 individuals, "all of whom happen to be Chinese subjects," whereas "eighty others, not Chinese subjects, [we]re permitted to carry on the same business under similar conditions." *Id.* at 374, 6 S.Ct. 1064.

Likewise, in *Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), the Supreme Court cited numerous academic studies of the psychological impact of segregation on children

and youth as evidence that "[s]eparate educational facilities are inherently unequal," and therefore violate the Equal Protection Clause, *id.* at 494–95, 74 S.Ct. 686 & n.11. And the Supreme Court has recognized that "[s]tatistical analyses have served and will continue to serve an important role as one indirect indicator of racial discrimination in access to service on governmental bodies." *Mayor of Phila. v. Educ. Equal. League*, 415 U.S. 605, 620, 94 S.Ct. 1323, 39 L.Ed.2d 630 (1974). The Court also embraced the use of statistical evidence to determine whether a governmental body was justified, under the Fourteenth Amendment, in using "race-based measures to ameliorate the effects of past discrimination." *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 476–77, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (plurality op.); *see also id.* at 509, 109 S.Ct. 706 ("[E]vidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified.").

The Supreme Court has relied on statistical and social science evidence in cases involving voting rights and redistricting, in particular. For example, to support their racial gerrymandering claim, the plaintiffs in *Gomillion* alleged that the City of Tuskegee, Alabama, redrew its municipal boundaries "to remove from the city all save only four or five of its 400 Negro voters while not removing a single white voter or resident." 364 U.S. at 341, 81 S.Ct. 125. The Court concluded that the plaintiffs alleged adequate facts to support a claim under the Equal Protection Clause, explaining that "[i]f these allegations upon a trial remain uncontradicted or unqualified, the conclusion would be irresistible, tantamount for all practical purposes to a *mathematical demonstration*, that the legislation is solely concerned with segregating white and colored voters." *Id.* (emphasis added). More recently, the Court relied on statistical analyses to strike down as unconstitutional the coverage formula in Section 4(b) of the Voting Rights Act, citing evidence that the gap between white and black voter registration percentages had fallen substantially since Congress first adopted the coverage formula in 1965, as had the percentage of proposed voting changes facing objections from the Attorney General. *Shelby Cty. v. Holder*, 570 U.S. 529, 133 S.Ct. 2612, 2626, 186 L.Ed.2d 651 (2013). And of particular note, in its decision holding that the 2011 Plan constituted a racial gerrymander, the Supreme Court in part relied on an expert statistical analysis—which found that the General Assembly disproportionately moved blacks into the racially gerrymandered districts, even when controlling for party registration—as proof that the General Assembly predominantly relied on race, rather than partisan considerations, in drawing district lines. *Cooper*, 137 S.Ct. at 1477–78.

***28** Contrary to Legislative Defendants' assertion that Plaintiffs must identify a specific empirical test derived from the language of the Constitution to prove the existence of a judicially manageable standard to adjudicate their constitutional claims, in none of these cases did the Supreme Court hold that the particular statistical or social science analyses upon which it relied had—or had to have—constitutional pedigree, or that the plaintiff had to identify a specific empirical threshold, across which the relevant constitutional provision would be violated. For example, the *Gomillion* Court did not state that a statistical analysis revealing that the municipal boundary plan had fenced out, say, only 80 percent of blacks, as opposed to 99 percent, would be inadequate to establish a constitutional violation. Nor did the Court require that the plaintiffs identify the particular percentage of fenced-out blacks at which a boundary plan would violate the Equal Protection Clause. Likewise, the *Brown* Court did not point to any specific constitutional basis for its reliance on psychological research demonstrating the impact of segregation on children and youth, nor did it require the plaintiffs to identify a specific degree of adverse psychological impact necessary to support an Equal Protection claim. And the *Shelby County* Court did not require the states seeking invalidation of the coverage formula to identify a specific gap between white and black voter registration percentages or a specific percentage of proposed voting changes facing objections from the Attorney General at which Congress would be constitutionally barred from displacing the states' rights to administer elections. Rather, in all of the cases, the Supreme Court treated the empirical analyses as *evidence* of a violation of an established constitutional standard—that governmental entities must act impartially, that governmental entities must not invidiously discriminate based on race or national origin, that the federal government may not interfere in traditional areas of state authority absent a compelling justification, and that the federal government must have a legitimate reason for subjecting certain states to more intrusive scrutiny than others.

[19] Contrary to Legislative Defendants' assertion, therefore, courts are not foreclosed from considering statistical analyses and " 'social science' theories" as evidence of a violation of a constitutional or statutory standard. Leg. Defs.' Br. 2. But that does not mean courts must blindly accept such analyses either. On the contrary, in all cases courts play an essential gatekeeping role in ensuring that an expert analysis—including each analysis introduced by Plaintiffs and Legislative Defendants—is sufficiently reliable, in that it "is based on sufficient facts or data," "is the product of reliable principles and methods," and the principles and methods have "been reliably applied ... to the facts of the case." Fed. R. Evid. 702; *see also Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). And when, as here, the court also serves as the finder-of-fact, the court must carefully weigh empirical evidence, and discount such evidence's probative value if it fails to address the relevant question, lacks rigor, is contradicted by more reliable and compelling evidence, or is otherwise unworthy of substantial weight.

Here, in arguing that Plaintiffs' empirical evidence fails to provide a judicially manageable standard for adjudicating their claims, Legislative Defendants identify what they see as a number of specific flaws, limitations, and weaknesses of that evidence—that the partisan asymmetry measures cannot be applied in all states, that the simulated maps fail to take into account certain criteria on which the General Assembly relied, that several of the analyses rely on hypothetical election results, to name a few. Although we ultimately find these objections either unfounded or insufficiently compelling to overcome the significant probative value of the analyses, *see infra* Part III, these are fair criticisms. But—as evidenced by their consistent placement of "social science" in quotation marks and their characterization of Plaintiffs' evidence as "academically inspired"—Legislative Defendants' judicial manageability argument appears to rest on a more cynical objection: that we should dismiss Plaintiffs' actions as nonjusticiable simply because much of the evidence upon which Plaintiffs' rely has its genesis in academic research and is the product of an effort by scholars to apply novel, and sometimes complex, methodological approaches to address a previously intractable problem. To the extent Legislative Defendants are in fact making such an argument, it fails as a matter of both fact and law. As a matter of fact, Legislative Defendants are correct that the application of Plaintiffs' empirical methods to redistricting, to date, has largely occurred in academic research. *But see Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elections*, 827 F.3d 333, 344 (4th Cir. 2016) (relying on analysis of hundreds of computer-simulated districting plans as evidence that population deviations in municipal districting plan were attributable to illegitimate partisan purpose rather than legitimate redistricting objectives); *Whitford*, 218 F.Supp.3d at 890–906 (relying on predictions of vote percentages based on historical election data, a "uniform swing analysis," and a measure of partisan asymmetry to conclude Wisconsin legislative redistricting plan adversely affected representational rights of non-Republican voters). But the empirical methods themselves have been developed and broadly applied inside and outside of academia to address a wide variety of problems. For example, Dr. Jowei Chen, a political science professor at the University of Michigan, testified that the computational algorithms and statistical theories he used in generating simulated redistricting plans to assess the partisan performance of the 2016 Plan are used by logistics companies to optimize their distribution chains. Trial Tr. II, at 25:2–24. And other empirical methods on which Plaintiffs' expert witnesses relied are broadly used by governments, the business community, and academia in a variety of other fields ranging from national defense, to public safety, to finance, and to health care. Br. *Amicus Curiae* Eric S. Lander in Supp. of Appellees 23–25, *Gill v. Whitford*, No. 16–1161 (S. Ct. Aug. 31, 2017).

***29** To hold that such widely used, and relied upon, methods cannot provide a judicially manageable standard for adjudicating Plaintiffs' partisan gerrymandering claims would be to admit that the judiciary lacks the competence—or willingness—to keep pace with the technical advances that simultaneously facilitate such invidious partisanship and provide an opportunity to remedy it. *See Vieth*, 541 U.S. at 312–13, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment) (explaining that advances in technology in redistricting pose both a "threat"—because technology increases "the temptation to use partisan favoritism in districting"—and a "promise"—because "these new 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"). But "the Constitution forbids 'sophisticated

as well as simpleminded modes of discrimination.' " *Reynolds*, 377 U.S. at 563, 84 S.Ct. 1362 (quoting *Lane v. Wilson*, 307 U.S. 268, 275, 59 S.Ct. 872, 83 L.Ed. 1281 (1939)). Accordingly, the judiciary likewise has an obligation to keep pace with technological and methodological advances so it can effectively fulfill its constitutional role to police ever-more sophisticated modes of discrimination.

As a legal matter, the empirical analyses' sophistication and genesis in academic research also do not preclude this Court from concluding that Plaintiffs' claims are judicially manageable. To be sure, the statistical analyses and social science theories used by Plaintiffs' experts are more advanced than the bare descriptive statistics upon which the Supreme Court relied in *Yick Wo*, *Gomillion*, and *Shelby County*. But the Court has not hesitated to accept sophisticated or novel empirical methods as evidence. For example, in *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), the Supreme Court endorsed the use of "extreme case analysis and bivariate ecological regression analysis," *id.* 52–53, 106 S.Ct. 2752, in determining whether an electoral district exhibits "racially polarized" voting, within the meaning of Section 2 of the Voting Rights Act, *id.* at 61, 106 S.Ct. 2752 (plurality op.). Notably, both forms of analysis derived from social science literature, as did the definition of "racially polarized" voting adopted by the Court. *Id.* at 53, 106 S.Ct. 2752 nn.20–21. Outside of the voting context, the Supreme Court has embraced new social science theories and empirical analyses to resolve a variety of constitutional and statutory disputes. *See, e.g.*, *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 881–82, 889–92, 127 S.Ct. 2705, 168 L.Ed.2d 623 (2007) (appealing to "the theoretical literature" and a variety of economic analyses to support its decision to reverse century-old precedent treating vertical price restraints as a per se violation of the Sherman Act); *Utah v. Evans*, 536 U.S. 452, 465, 122 S.Ct. 2191, 153 L.Ed.2d 453 (2002) (holding that Census Bureau's use of "hot-deck imputation" to conduct decennial census did not violate census statute or the Constitution, relying on the "technical literature" to determine whether hot-deck imputation constitutes "sampling"); *Maryland v. Craig*, 497 U.S. 836, 855, 857, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990) (appealing to "the growing body of academic literature documenting the psychological trauma suffered by child abuse victims who must testify in court" in holding that the Confrontation Clause did not categorically prohibit state laws permitting victims of child abuse to testify outside the presence of their alleged abusers).

As the judiciary's understanding and application of statistical and empirical methods have increased, it has come to appreciate that the attractive simplicity of less sophisticated methods—like the descriptive statistics relied on in *Yick Wo*, *Gomillion*, and *Shelby County*—comes with costs. For example, although descriptive statistics may reveal that an allegedly disfavored group of employees has a lower average salary than another group, that does not mean that the average salary difference is attributable to invidious discrimination, as the allegedly disfavored group's lower average salary may reflect a variety of nondiscriminatory reasons that can be accounted for adequately only by using more advanced statistical methods. *See Tagatz v. Marquette Univ.*, 861 F.2d 1040, 1044 (7th Cir. 1988) (Posner, J.) ("Correlation is not causation."); *Ste. Marie v. E. R.R. Ass'n*, 650 F.2d 395, 400 (2d Cir. 1981) (Friendly, J.); *see also* Jeffrey M. Wooldridge, Econometric Analysis of Cross Section and Panel Data § 1.1 (2002) ("Simply finding that two variables are correlated is rarely enough to conclude that a change in one variable causes a change in another.").

***30** Advances in statistical and empirical theory and application, therefore, have the potential to allow parties, experts, and amici to provide courts with more rigorous and probative evidence, thereby decreasing the risk that courts will render a decision that later proves to have rested on an errant empirical analysis. Consequently, it makes no practical or legal sense for courts to close their eyes to new scientific or statistical methods—as Legislative Defendants implicitly suggest—to prove or disprove claims premised on established legal standards. As Justice Kennedy recognized in *Vieth*, "new 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." 541 U.S. at 312–13, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment). That is precisely what we find Plaintiffs' empirical methods have done. *See infra* Part III.

More fundamentally, there is no constitutional basis for dismissing Plaintiffs' claims as judicially unmanageable —not because they are irrelevant, unreliable, or incorrectly applied, but simply because they rely on

new, sophisticated empirical methods that derive from academic research. The Constitution does not require the federal courts to act like Galileo's Inquisition and enjoin consideration of new academic theories, and the knowledge gained therefrom, simply because such theories provide a new understanding of how to give effect to our long-established governing principles. *See* Timothy Ferris, Coming of Age in the Milky Way 97–101 (1989). That is not what the founding generation did when it adopted a Constitution grounded in the then-untested political theories of Locke, Montesquieu, and Rousseau. That is not what the Supreme Court did when it recognized that advances in our understanding of psychology had proven that separate could not be equal. And that is not what we do here.

Legislative Defendants' characterization of the empirical evidence introduced by Plaintiffs' as a "smorgasbord" also suggests that Legislative Defendants view the sheer number of analyses upon which Plaintiffs' rely as rendering their claims judicially unmanageable. Leg. Defs.' Br. 2. But when a variety of different pieces of evidence, empirical or otherwise, point to the same conclusion—as is the case here—courts have *greater* confidence in the correctness of the conclusion because even if one piece of evidence is subsequently found infirm other probative evidence remains. *See, e.g.*, *Strickler v. Greene*, 527 U.S. 263, 293, 296, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999) (holding that exculpatory evidence withheld by government was not "material" for purposes of *Brady v. Maryland*, 373 U.S. 83, 83 (S.Ct. 1194, 10 L.Ed.2d 215 1963), when "there was considerable forensic and other physical evidence linking [the defendant] to the crime"). Even if none of the analyses introduced by Plaintiffs could, by itself, provide definitive evidence that the 2016 Plan constitutes an unconstitutional partisan gerrymander—which we do not necessarily believe is the case—"[a] case of discrimination can ... be made by assembling a number of pieces of evidence, none meaningful in itself, consistent with the proposition of statistical theory that a number of observations, each of which supports a proposition only weakly can, when taken as a whole, provide strong support if all point in the same direction: a number of weak proofs can add up to a strong proof." *Sylvester v. SOS Children's Vills. Ill., Inc.*, 453 F.3d 900, 903 (7th Cir. 2006) (Posner, J.) (internal quotation marks omitted).

In sum, Plaintiffs' reliance on academically derived, social science evidence to support their partisan gerrymandering claims does not render their claims judicially unmanageable.

c.

[20] Finally, Legislative Defendants contend that rejecting their nonjusticiability argument would be tantamount to nullifying the political branches' decision to require representatives to be elected from single-member districts. *See* Leg. Defs.' Br. 13 ("[W]hat plaintiffs are asking the Court to do is *sub silentio* eliminate district-based congressional redistricting in North Carolina."). Again, we disagree.

***31** Legislative Defendants are correct that, by statute, each State must "establish[ ] by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative." 2 U.S.C. § 2c. But our invalidation of the 2016 Plan as an unconstitutional partisan gerrymander in no way impacts North Carolina's authority—indeed, statutory obligation—to draw a congressional redistricting plan using single-member districts. Rather, it simply requires that the General Assembly, in drawing congressional district lines, not seek to diminish the electoral power of voters who supported or are likely to support candidates of a particular party.

Of equal significance, judicial restriction of partisan gerrymandering advances the purpose behind single-member districts, rather than undermines it. The Supreme Court long has recognized that the "basic aim" of requiring districting is to "achiev[e] ... fair and effective representations for all citizens." *Reynolds*, 377 U.S. at 565–66, 84 S.Ct. 1362. To that end, "[t]he very essence of districting is to produce a different—a more 'politically fair'—result than would be reached with elections at large, in which the winning party would take 100% of the legislative seats." *Gaffney*, 412 U.S. at 753, 93 S.Ct. 2321. The use of districting, as opposed to elections at large, serves a number of specific beneficial purposes. For example, unlike at-large electoral systems, which in politically divided states can lead to a wholesale change in the state's congressional delegation with only a small shift

in votes between parties, *see* Engstrom, *supra* at 22–28, 84 S.Ct. 526, single-member districting systems "maintain[ ] relatively stable legislatures in which a minority party retains significant representation," *Vieth*, 541 U.S. at 360, 124 S.Ct. 1769 (Breyer, J., dissenting). Additionally, single-member districts "diminish the need for coalition governments" and thereby "make[ ] it easier for voters to identify which party is responsible for government decision-making (and which rascals to throw out)." *Id.* at 357, 124 S.Ct. 1769. And single-member districts make it easier for a representative to understand the interests of her constituency and act on behalf of those interests because she serves a limited group of constituents, rather than the entire state. S. Rep. 90–291, at 28 (1967) (Individual Views of Sen. Bayh). The use of single-member districts comes with democratic costs, as well. Most notably, the stability achieved by single-member districts necessarily entails that a legislative body will be less responsive to shifts in popular will.

[21] Recall that the Supreme Court defines "partisan gerrymandering" as "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power," *Ariz. State Leg.*, 135 S.Ct. at 2658. Therefore, by definition, partisan gerrymandering—not judicial oversight of such gerrymandering—contravenes the purpose of district-based congressional districting because it is intended *not* to "achiev[e] ... fair and effective representations for *all* citizens," *Reynolds*, 377 U.S. at 565–66, 84 S.Ct. 1362 (emphasis added), and *not* to produce a "more 'politically fair' " result, *Gaffney*, 412 U.S. at 753, 93 S.Ct. 2321. And partisan gerrymandering undermines several of the specific benefits of single-member districts. It poses a risk that "a representative may feel more beholden to the cartographers who drew her district than to the constituents who live there." *LULAC*, 548 U.S. at 470, 126 S.Ct. 2594 (Stevens, J., concurring in part and dissenting in part). And by "entrenching" a party in power, *Ariz. State Leg.*, 135 S.Ct. at 2658, even in the face of shifting voter preferences, *LULAC*, 548 U.S. at 470–71, 126 S.Ct. 2594 (Stevens, J., concurring in part and dissenting in part), partisan gerrymandering makes it harder for voters "to throw the rascals out," *Vieth*, 541 U.S. at 357, 124 S.Ct. 1769 (Breyer, J., dissenting) (internal quotation marks omitted), magnifying the downsides to the use of single-member districts.

***32** **[22]** Not only does partisan gerrymandering contradict the purpose behind single-member districting—and enhance its drawbacks—the legislative history of Section 2c reveals that Congress did not intend for the statute to empower state legislatures to engage in partisan gerrymandering. Congress adopted the current version of the single-member district statute in 1967, in the wake of the Supreme Court's invalidation of widespread malapportionment of congressional districts in *Wesberry*. *See* S. Rep. 90–291, at 2. The draft of the statute reported out of the House required that congressional districts be "in as reasonably a compact form as the State finds practicable." *Id.* at 4. The House intended for the compactness requirement to reflect a "congressional policy against gerrymandering" and to "prevent gerrymandering," including gerrymandering to "attempt 'to minimize or cancel out the voting strength of racial or *political elements* of the voting population.' " *Id.* (emphasis added) (quoting *Burns v. Richardson*, 384 U.S. 73, 89, 86 S.Ct. 1286, 16 L.Ed.2d 376 (1965)). Congress removed the compactness provision from the final version of the statute after a group of senators expressed concern that the ambiguity of the reasonableness standard would be "an invitation to gerrymander, especially to gerrymander at the expense of urban minority groups." *Id.* at 19 (Minority Views of Sens. Kennedy, Dodd, Hart, and Tydings). Accordingly, although legislators were divided as to whether the compactness provision would be an effective tool to combat gerrymandering, they agreed that the statute should not serve as an "invitation" to state legislatures to engage in partisan gerrymandering, as we find Legislative Defendants did here.

* * * * *

In sum, we conclude that Plaintiffs have standing to challenge each of the districts created by the 2016 Plan and the 2016 Plan as a whole. We further hold that each of Plaintiffs' claims is justiciable, and, in reaching that conclusion, we reject Legislative Defendants' argument that Plaintiffs have failed to provide this Court with a judicially manageable standard for resolving their claims.

III.

[23] Having disposed of Legislative Defendants' standing and justiciability arguments, we now turn to Plaintiffs' claims under the Equal Protection Clause of the

Fourteenth Amendment. The Equal Protection Clause prohibits a State from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV. Partisan gerrymandering potentially runs afoul of the Equal Protection Clause because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party. *Cf. Lehr v. Robertson*, 463 U.S. 248, 265, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983) ("The concept of equal justice under law requires the State to govern impartially."). Put differently, a redistricting plan violates the Equal Protection Clause if it "serve[s] *no purpose* other than to favor one segment—whether racial, ethnic, religious, economic or *political*—that may occupy a position of strength ... or to disadvantage a politically weak segment." *Karcher*, 462 U.S. at 748, 103 S.Ct. 2653 (Stevens, J. concurring).

[24] As this Court explained in denying Defendants' motions to dismiss, the Supreme Court's splintered partisan gerrymandering decisions establish that in order to prove a prima facie partisan gerrymandering claim under the Equal Protection Clause, "a plaintiff must show both [1] discriminatory intent and [2] discriminatory effects." *Common Cause*, 240 F.Supp.3d at 387 (citing *Bandemer*, 478 U.S. at 127, 106 S.Ct. 2797 (plurality op.); *id.* at 161, 106 S.Ct. 2797 (Powell, J., concurring and dissenting)). Plaintiffs further propose—and we agree—that if Plaintiffs establish that the 2016 Plan was enacted with discriminatory intent and resulted in discriminatory effects, the plan will nonetheless survive constitutional scrutiny if its discriminatory effects are attributable to the state's political geography or another legitimate redistricting objective. League Br. 21; Common Cause Br. 17–19; *see also Bandemer*, 478 U.S. at 141–42, 106 S.Ct. 2797 (plurality op.) (recognizing justification step); *cf. Whitford*, 218 F.Supp.3d at 884 ("[T]he Equal Protection clause prohibit[s] a redistricting scheme which (1) is intended to place a severe impediment on the effectiveness of the votes of individual citizens on the basis of their political affiliation, (2) has that effect, and (3) cannot be justified on other, legitimate legislative grounds.").

Although the three-step framework governing partisan gerrymandering claims under the Equal Protection Clause is not in dispute, neither the Supreme Court nor the parties agree as to the standard of proof for each of those elements—or whether Plaintiffs satisfied those standards—the questions to which we now turn.

A.

***33** **[25]** The Supreme Court long has required that a plaintiff seeking relief under the Equal Protection Clause to establish that a challenged official action can "be traced to a ... discriminatory purpose." *Washington v. Davis*, 426 U.S. 229, 240, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976). The discriminatory purpose or intent requirement extends to Equal Protection challenges to redistricting plans, in particular, including partisan gerrymandering challenges. *See, e.g.*, *Bandemer*, 478 U.S. at 127, 106 S.Ct. 2797 (plurality op.); *id.* at 161, 106 S.Ct. 2797 (Powell, J., concurring in part and dissenting in part); *Rogers v. Lodge*, 458 U.S. 613, 617, 102 S.Ct. 3272, 73 L.Ed.2d 1012 (1982); *see also Cooper*, 137 S.Ct. at 1463 (holding that to establish a racial gerrymandering claim under the Equal Protection Clause, a plaintiff must show "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district").

[26] To establish a discriminatory purpose or intent, a plaintiff need not show that the discriminatory purpose is "express or appear[s] on the face of the statute." *Washington*, 426 U.S. at 241, 96 S.Ct. 2040. Rather, "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts." *Id.* at 242, 96 S.Ct. 2040. In determining whether an "invidious discriminatory purpose was a motivating factor" behind the challenged action, evidence that the impact of the challenged action falls "more heavily" on one group than another "may provide an important starting point." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). "Sometimes a clear pattern, unexplainable on grounds other than [invidious discrimination], emerges from the effect of the state action even when the governing legislation appears neutral on its face." *Id.* Likewise, "[t]he historical background of the decision" may be probative of discriminatory intent, "particularly if it reveals a series of official actions taken for invidious purposes." *Id.* at 267, 97 S.Ct. 555. "The specific sequence of events leading up to the challenged decision also may shed some light on the decisionmaker's purposes," including whether the legislative process involved "[d]epartures

from the normal procedural sequence." *Id.* Additionally, "[t]he legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decision-making body, minutes of its meetings, or reports." *Id.* at 268, 97 S.Ct. 555.

1.

Although the discriminatory intent requirement and the types of evidence probative of such intent are well-established, it remains unclear what level of intent a plaintiff must prove to establish a partisan gerrymandering claim. Common Cause Plaintiffs assert that the degree of partisan intent motivating the drawing of the districting plan's lines determines the level of scrutiny under which a court must review the plan. Common Cause Br. 16–18. For example, if a partisan purpose "predominated" over other legitimate redistricting criteria, then the 2016 Plan warrants strict scrutiny, Common Cause Plaintiffs maintain. *Id.* at 17. If partisan advantage was only "a purpose" motivating the 2016 Plan, then, according to Common Cause Plaintiffs, the plan should be reviewed under the "sliding scale" standard of review set forth in *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). Common Cause Br. 18. By contrast, League Plaintiffs argue that Supreme Court precedent forecloses a "predominant" or "sole" intent standard in partisan gerrymandering cases. League Br. 6. Rather, League Plaintiffs assert that a partisan gerrymandering plaintiff will meet its burden under the intent prong if it proves that the redistricting body acted with the intent to "disadvantage[e] one party's (and favor[ ] the other party's) voters and candidates." *Id.* at 5.

***34** We agree with League Plaintiffs that Supreme Court precedent weighs against a "predominant intent" standard. In *Bandemer*, the plurality opinion did not require that a plaintiff establish the mapmakers were solely or primarily motivated by invidious partisanship, but instead required proof of "intentional discrimination against an identifiable political group." 478 U.S. at 127, 106 S.Ct. 2797. And in *Vieth*, the plurality expressly rejected a "predominant" intent standard as judicially unmanageable. *See* 541 U.S. at 284–85, 124 S.Ct. 1769 (plurality op.) (stating a "predominant motivation" requirement would not be judicially manageable because it is "indeterminate" and "vague," particularly when a plaintiff lodges a challenge to an entire plan, as opposed to a single district).

The *Bandemer* and *Vieth* pluralities' rejection of a "primary" or "predominant" intent standard accords with Equal Protection principles. In describing the intent requirement for Equal Protection claims in *Arlington Heights*, the Supreme Court held that a plaintiff generally [16] need not prove that a legislature took a challenged action with the "sole," "dominant," or "primary" purpose of discriminating against an identifiable group. 429 U.S. at 265–66, 97 S.Ct. 555. The Court rejected such a heightened intent requirement because "[t]he search for legislative purpose is often elusive enough ... without a requirement that primacy be ascertained." *Id.* at 265, 97 S.Ct. 555 n.11 (internal citation omitted). "Legislation is frequently multipurposed: the removal of even a 'subordinate' purpose may shift altogether the consensus of legislative judgment supporting the statute." *Id.*; *see also LULAC*, 548 U.S. at 417–18, 126 S.Ct. 2594 (opinion of Kennedy, J.) (rejecting partisan gerrymandering framework premised on "sole" intent requirement because legislative actions are "a composite of manifold choices," making it difficult to identify the sole or predominant motivation behind the decision).

[27] **[28]** Another question bearing on the discriminatory intent requirement is what type of intent a partisan gerrymandering plaintiff must prove. As explained above, there are a number of purposes for which a state redistricting body permissibly may rely on political data or take into account partisan considerations. *See supra* Part II.B.2.a. Accordingly, a plaintiff in a partisan gerrymandering case cannot satisfy the discriminatory intent requirement simply by proving that the redistricting body intended to rely on political data or to take into account partisan considerations. Rather, the plaintiff must show that the redistricting body intended to apply partisan classifications "in an invidious manner or in a way unrelated to any legitimate legislative objective." *Vieth*, 541 U.S. at 307, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment); *id.* at 339, 124 S.Ct. 1769 (Stevens, J., dissenting) (holding redistricting plan would violate Equal Protection Clause if it reflected "a naked desire to increase partisan strength"); *see also Romer v. Evans*, 517 U.S. 620, 632, 116 S.Ct.

1620, 134 L.Ed.2d 855 (1996) (defining an "invidious" classification as "a classification of persons undertaken for its own sake ... inexplicable by anything but animus towards the class it affects"). To that end, a plaintiff satisfies the discriminatory purpose or intent requirement by introducing evidence establishing that the state redistricting body acted with an intent to "subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Leg.*, 135 S.Ct. at 2658.

2.

***35** **[29]** We agree with Plaintiffs that a wealth of evidence proves the General Assembly's intent to "subordinate" the interests of non-Republican voters and "entrench" Republican domination of the state's congressional delegation. In particular, we find that the following evidence proves the General Assembly's discriminatory intent: (a) the facts and circumstances surrounding the drawing and enactment of the 2016 Plan; (b) empirical analyses of the 2016 Plan; and (c) the discriminatory partisan intent motivating the 2011 Plan, which the General Assembly expressly sought to carry forward when it drew the 2016 Plan.

a.

Several aspects of the 2016 redistricting process establish that the General Assembly sought to advance the interests of the Republican Party at the expense of the interests of non-Republican voters. *First*, Republicans had exclusive control over the drawing and enactment of the 2016 Plan. The Committee's Republican leadership and majority denied Democratic legislators access to the principal mapdrawer, Dr. Hofeller. Ex. 1011, at 36:9–20; Ex. 1014, at 44:23–45:15; Ex. 2008. And with the exception of one small change to prevent the pairing of Democratic incumbents, Dr. Hofeller finished drawing the 2016 Plan *before* Democrats had an opportunity to participate in the legislative process. Additionally, all of the key votes —including the Committee votes adopting the Political Data and Partisan Advantage criteria and approving the 2016 Plan, and the House and Senate votes adopting the 2016 Plan—were decided on a party-line basis. Ex. 1008, at 12:3–7, 67:10–72:8; Ex. 1011, at 110:13–22; Ex. 1016, at 81:6–16. As the *Bandemer* plurality recognized, when a single party exclusively controls the redistricting process, "it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." *Bandemer*, 478 U.S. at 129, 106 S.Ct. 2797 (plurality op.); *Pope*, 809 F.Supp. at 396.

Second, the legislative process "[d]epart[ed] from the normal procedural sequence." *Arlington Heights*, 429 U.S. at 267, 97 S.Ct. 555. Representative Lewis and Senator Rucho instructed Dr. Hofeller regarding the criteria he should follow in drawing the 2016 Plan *before* they had been appointed co-chairs of the Committee and *before* the Committee debated and adopted those criteria. Lewis Dep. 77:7–20. Indeed, Dr. Hofeller completed drawing the 2016 Plan *before* the Committee met and adopted the governing criteria. *Id.* And notwithstanding that the Committee held public hearings and received public input, Dr. Hofeller never received, much less considered, *any* of that input in drawing the 2016 Plan. Rucho Dep. 55:4–56:13; Hofeller Dep. 177:9–21.

Third, the plain language of the "Partisan *Advantage*" criterion reflects an express legislative intent to discriminate—to favor voters who support Republican candidates and subordinate the interests of voters who support non-Republican candidates. Ex. 1007 (emphasis added). Moreover, the Partisan Advantage criterion reflects an express intent to entrench the Republican supermajority in North Carolina's congressional delegation by seeking to "maintain" the partisan make-up of the delegation achieved under the unconstitutional 2011 Plan. *Id.*

The official explanation of the purpose behind that criterion by Representative Lewis—who co-chaired the Committee and, in that capacity, developed the Adopted Criteria and oversaw the drawing of the 2016 Plan—demonstrates as much. Representative Lewis explained that "to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage." Ex. 1005 at 54; *see also* Ex. 1016, at 29:12–13 ("We did seek a partisan advantage in drawing the map." (Statement of Rep. Lewis)). To that end, the Partisan Advantage criterion required "draw[ing] lines so that more of the whole VTDs voted for the Republican on the ballot than they did the Democrat," he explained. Ex. 1005, 57:10–16. And Representative Lewis "acknowledge[d] freely that this would be a political gerrymander," *Id.* at 48:4–5—a sentiment with which Senator Rucho "s[aw] nothing wrong," Rucho Dep. 118:20–119:10.

***36** *Fourth*, the process Dr. Hofeller followed in drawing the 2016 Plan, in accordance with Representative Lewis and Senator Rucho's instructions, reflected the General Assembly's intent to discriminate against voters who were likely to support non-Republican candidates. In particular, in accordance with the Political Data criterion, Dr. Hofeller used past election results—which Dr. Hofeller, Representative Lewis, and Senator Rucho agree serve as the best predictor of whether a geographic area is likely to vote for a Republican or Democratic candidate, Ex. 1016, at 30:23–31:3; Hofeller Dep. 25:1–17; Rucho Dep. 95:15–16—to create a composite partisanship variable indicating whether, and to what extent, a particular precinct was likely to support a Republican or Democratic candidate, Hofeller Dep. II 262:21–24, 267:5–6. Of particular relevance to the mapdrawers' intent to draw a plan that would favor Republicans for the remainder of the decade, Dr. Hofeller testified that he believed that because "the underlying political nature of the precincts in the state does not change," his composite partisanship variable indicated whether a particular precinct would be a "strong Democratic precinct [or Republican precinct] *in every subsequent election*." Ex. 2045, at 525:14–17 (emphasis added); *see also* Hofeller Dep. II 274:9–12 (explaining partisan characteristics of particular VTD, as reflected in Dr. Hofeller's composite partisanship variable, are likely to "carry ... through a string of elections").

Dr. Hofeller then used the partisanship variable to assign a county, VTD, or precinct "to one congressional district or another," Hofeller Dep. 106:23–107:1, 132:14–20, and "as a partial guide" in deciding whether and where to split VTDs, municipalities, or counties, *id.* 203:4–5; Hofeller Dep. II 267:10–17. For example, Dr. Hofeller split—or, in redistricting parlance, "cracked"—the Democratic city of Asheville between Republican Districts 10 and 11 and the Democratic city of Greensboro between Republican Districts 6 and 13. Ex. 4066, 4068. And Dr. Hofeller drew the Districts 4 and 12 to be "predominantly Democratic," Hofeller Dep. 192:7–12, by concentrating—or "packing"—Democratic voters in Durham, Mecklenburg, and Wake Counties in those two districts, Ex. 4070, Ex. 4072.

After drawing a draft plan, Dr. Hofeller then would use his partisanship variable to assess the partisan performance of the plan on a district-by-district basis and as a whole. *Id.* at 247:19–23; Hofeller Dep. II 283:15–22, 284:20–285:4. Based on that review, Dr. Hofeller would convey his assessment of the partisan performance of the plan to Representative Lewis. Hofeller Dep. II 290:17–25. The evidence establishes that Representative Lewis's appraisal of the various draft plans provided by Dr. Hofeller focused on such plans' likely partisan performance. Representative Lewis admitted as much during debate on the proposed map, stating that he believed "electing Republicans is better than electing Democrats," and therefore that he "drew this map in a way to help foster" the election of Republican candidates. Ex. 1016, at 34:21–23. And Representative Lewis testified that when he assessed the draft plans, "[n]early every time" he used the results from North Carolina's 2014 Senate race between Senator Thom Tillis and former Senator Kay Hagan to evaluate the plans' partisan performance in "future elections." Lewis Dep. 63:9–64:17.

b.

We also find that empirical evidence reveals that the 2016 Plan "bears more heavily on [supporters of candidates of one party] than another." *Washington*, 426 U.S. at 242, 96 S.Ct. 2040. In particular, two empirical analyses introduced by Plaintiffs demonstrate that the pro-Republican partisan advantage achieved by the 2016 Plan cannot be explained by the General Assembly's legitimate redistricting objectives, including legitimate redistricting objectives that take into account partisan considerations.

Dr. Jonathan Mattingly, a mathematics and statistics professor at Duke University and an expert in applied computational mathematics, drew an ensemble of 24,518 simulated districting plans from a probability distribution of *all* possible North Carolina congressional redistricting plans. Ex. 3002, at 9–10. To create the ensemble, Dr. Mattingly programmed a computer first to draw a random sample of more than 150,000 simulated plans using a Markov chain Monte Carlo algorithm—a widely employed statistical method used in a variety of settings [17] —that randomly perturbed the lines of an initial districting plan [18] to generate successive new plans. *Id.* at 13–15. The computer algorithm then eliminated from the 150,000 plan sample all "unreasonable" districting plans—plans with noncontiguous districts, plans with population deviations exceeding 0.1 percent, plans that

were not reasonably compact under common statistical measures of compactness, plans that did not minimize the number of county and VTD splits, and plans that did not comply with the Voting Rights Act [19]—yielding the 24,518–plan ensemble. [20] *Id.* at 15–17. The criteria Dr. Mattingly used to eliminate "unreasonable" plans from his sample reflect traditional redistricting criteria, *see Harris*, 136 S.Ct. at 1306 (recognizing compactness, contiguity, maintaining integrity of political subdivisions, and, potentially, compliance with the Voting Rights Act, as "legitimate" considerations for deviations from population equality in state redistricting plans), and nearly all non-partisan criteria adopted by the Committee, *see* Ex. 1007.

***37** After constructing the 24,518–plan ensemble, Dr. Mattingly analyzed the partisan performance of the 2016 Plan relative to the plans in his ensemble using precinct-level actual votes from North Carolina's 2012 and 2016 congressional elections. [21] Dr. Mattingly's analysis, therefore, "assumed that the candidate does not matter, that a vote for the Democrat or Republican will not change, even after the districts are rearranged." Ex. 3002, at 23. Dr. Mattingly found that 0.36 percent (89/24,518) of the plans yielded a congressional delegation of 9 Republicans and 4 Democrats—the outcome that would have occurred under the 2016 Plan—when he evaluated the ensemble using actual 2012 votes. *Id.* at 3; Ex. 3040, at 7. The ensemble most frequently yielded plans that would have elected 7 (39.52%) or 6 (38.56%) Republicans. Ex. 3002, at 4; Ex. 3040, at 7. Using actual 2016 congressional votes, a congressional delegation of 10 Republicans and 3 Democrats—the outcome that occurred under the 2016 Plan—occurred in less than 0.7 percent of the simulated plans (162/24,518), with a delegation of 8 Republicans and 5 Democrats occurring in approximately 55 percent of the plans. Ex. 3040, at 19. Put differently, using both actual 2012 or 2016 votes, more than 99 percent of the 24,518 simulated maps produced fewer Republican seats than the 2016 Plan. Trial Tr. I, at 35:9–10.

Dr. Mattingly's analysis of the simulated plans also demonstrated that the General Assembly "cracked" and "packed" Democratic voters. Dr. Mattingly ordered the 13 congressional districts in each of the 24,518 simulated plans from lowest to highest based on the percentage of Democratic votes that would have been cast in the districts in the 2012 and 2016 elections. Ex. 3002, at 5–7. When analyzed using the results of both the 2012 and 2016 election, the medians of the Democratic vote share in each of the 13 districts "form a relatively straight, gradually increasing line from the most Republican district ... to the most Democratic." *Id.* at 7; Ex. 3040, at 12. An identical plot of the Democratic vote percentages under a plan drawn by a bipartisan commission of former judges took on the same linear form. *Id.* at 13.

By contrast, when Dr. Mattingly conducted the same analysis using the 2016 Plan, he found that the line connecting the medians of the Democratic vote share in each of the 13 districts took on an "S-shaped" form, which Dr. Mattingly characterized as "the signature of gerrymandering," because the 2016 Plan places "significantly more Democrats in the three most Democratic districts and fairly safe Republican majorities in the first eight most Republican districts." Ex. 3002, at 8; Ex. 3040, at 18, 30, 39; Trial Tr. I, 35:19–22 ("[T]here were clearly many, many more Democrats packed into those Democratic districts [in the 2016 Plan]; and on the other hand, that allowed there to be many more Republicans in the next group of districts."). Using 2012 votes, for example, the percentage of votes cast for Democratic candidates in the three most Democratic districts in the 2016 Plan was significantly higher than the percentage of votes casts for Democratic candidates in the three most Democratic districts in the 24,518 plan sample, and the percentage of votes cast for Democratic candidates in the sixth through tenth most Republican districts was significantly lower than in the equivalent districts in the sample. Ex. 3040, at 15–19; Trial Tr. I, at 60:6–23 (describing the sixth through thirteenth most Republican districts in 2016 Plan as "extreme outliers" relative to the simulated plans). Dr. Mattingly found the same pattern of packing Democratic voters in the three most Democratic districts when he used the votes from the 2016 election. Ex. 3040, at 27–30.

To determine whether the 2016 Plan's pro-Republican bias could have resulted from chance, Dr. Mattingly analyzed how "slight[ ]" changes in the boundaries of the districts in the 2016 Plan impacted the plan's partisan performance. Trial Tr. I, at 36:3–12. That analysis found that "when [he] shifted just as little as 10 percent of the boundary," the new map produced a "very, very different" partisan result that was "[m]uch, much less advantageous to Republicans." *Id.* Dr. Mattingly performed a number of additional analyses to validate his results by assessing their

sensitivity to changes in his model—including seeking to reduce the number of county splits in his sample, reducing the population deviation threshold, and altering the compactness threshold—all of which confirmed the robustness of his results. [22] Ex. 3040, at 35–38; Trial Tr. I, at 83:23–84:1, 85:9–20, 85:21–86:24.

***38** Based on his principal analyses and sensitivity and robustness tests, Dr. Mattingly concluded that the 2016 Plan is "heavily gerrymandered" and "dilute[s] the votes" of supporters of Democratic candidates. Ex. 3002, at 9. He further concluded that the General Assembly could not "have created a redistricting plan that yielded [the pro-Republican] results [of the 2016 Plan] unintentionally." Trial Tr. I, at 62:9–12; *see also id.* at 73:8–9 (stating the pro-Republican partisan results of the 2016 Plan, when analyzed using 2016 votes, "would be essentially impossible to generate randomly"); *id.* at 92:24–93:8 (opining that 2016 Plan was "specifically tuned" to achieve a pro-Republican "partisan advantage"). And Dr. Mattingly further opined "that it's extremely unlikely that one would have produced maps that had that level of packing here and that level of depletion [of Democratic votes] here unintentionally or using nonpartisan criteria." *Id.* at 71:24–72:2.

We find that Dr. Mattingly's analyses, which he confirmed through extensive sensitivity testing, provide strong evidence that the General Assembly intended to subordinate the interests of non-Republican voters and entrench the Republican Party in power. In particular, given that 99 percent of Dr. Mattingly's 24,518 simulated plans—which conformed to traditional redistricting criteria and the non-partisan criteria adopted by the Committee—would have led to the election of at least one additional Democratic candidate, we agree with Dr. Mattingly's conclusion that the 2016 Plan's pro-Republican bias is not attributable to a legitimate redistricting objective, but instead reflects an intentional effort to subordinate the interests of non-Republican voters. Dr. Mattingly's analysis that the packing and cracking of non-Republican voters had to have been the product of an intentional legislative effort reinforces that conclusion. And Dr. Mattingly's finding that the 2016 Plan produced "safe Republican majorities in the first eight most Republican districts," Ex. 3002, at 8, shows that the General Assembly intended for the partisan advantage to persist. That the 2016 Plan's intentional pro-Republican bias exists when Dr. Mattingly used the actual votes from *both* 2012 (a relatively good year for Democrats) and 2016 (a relatively good year for Republicans) also speaks to the imperviousness of the 2016 Plan's partisan advantage to changes in candidates and the political environment.

Dr. Jowei Chen, a political science professor at the University of Michigan and expert in political geography and redistricting, also evaluated the 2016 Plan's partisan performance relative to simulated districting plans. Trial Tr. I, at 157:2–4. But rather than creating a representative ensemble of districting plans by randomly perturbing an initial plan, as Dr. Mattingly did, Dr. Chen created a computer algorithm to draw three random sets of 1,000 simulated districting plans that comply with specific criteria. [23] Ex. 2010, at 2. To determine "whether the distribution of partisan outcomes created by the [2016 Plan] could have plausibly emerged from a non-partisan districting process," *id.* at 4, Dr. Chen, like Dr. Hofeller, then analyzed the partisan performance of the 2016 Plan relative to the plans in his three 1,000–plan samples using precinct-level election results, *id.* at 9. Unlike Dr. Hofeller, who used results from North Carolina's 2012 and 2016 congressional elections, Dr. Chen used two equally-weighted averages of precinct-level votes cast in previous statewide elections: (1) the seven statewide elections Dr. Hofeller included in his composite partisanship variable and (2) the twenty elections included in the Committee's Political Data criterion. *Id.* at 9–10. As the Fourth Circuit explained, "Dr. Chen's computer simulations are based on the logic that if a computer randomly draws [1,000] redistricting plans following traditional redistricting criteria, and the actual enacted plan[ ] fall[s] completely outside the range of what the computer has drawn [in terms of partisanship], one can conclude that the traditional criteria do not explain that enacted plan." *Raleigh Wake Citizens Ass'n*, 827 F.3d at 344.

***39** Dr. Chen programmed the computer to draw the first set of districting plans to follow what he deemed to be the non-partisan criteria included in the Committee's Adopted Criteria: population equality, contiguity, minimizing county and VTD splits, and maximizing compactness. Ex. 2010, at 6. The 1,000 simulated plans generated by the computer split the same or fewer counties and VTDs as the 2016 Plan and significantly improved the compactness of the 2016 Plan under the Reock and Popper–Polsby measures of compactness adopted by the Committee. *Id.* at 6–7.

Dr. Chen found that *none* of the 1,000 plans yielded a congressional delegation of 10 Republicans and 3 Democrats—the outcome that would have occurred under the 2016 Plan—when he evaluated the sample using Dr. Hofeller's seven-election average. *Id.* at 13–14. The sample most frequently yielded plans that would have elected 6 (32.4%) or 7 (45.6%) Republicans. *Id.* at 13. Using the results of the twenty elections referenced in the Adopted Criteria, a congressional delegation of 10 Republicans and 3 Democrats—the outcome that would have occurred under the 2016 Plan—again occurred in *none* of the simulated plans, with a delegation of 6 (52.5%) Republicans occurring most frequently. *Id.* Based on these results, Dr. Chen concluded that "the [2016 Plan] is an extreme partisan outlier when compared to valid, computer-simulated districting plans" and that the Committee's "partisan goal—the creation of 10 Republican districts—predominated over adherence to traditional districting criteria." *Id.* at 10–11.

To test whether the Committee's goal of protecting incumbents called into question the validity of his results, Dr. Chen next programmed his computer to draw maps that adhered to the requirements it used to draw the first set of simulated maps, and also to not pair in a single district any of the 13 incumbents elected under the 2011 Plan. *Id.* at 15. By comparison, the 2016 Plan paired 2 of the 13 incumbents elected under the 2011 Plan. *Id.* Like the first set of simulations, the second set of simulated plans split the same or fewer counties and VTDs as the 2016 Plan and improved the compactness of the 2016 Plan under the Reock and Popper–Polsby measures. *Id.* at 18. Dr. Chen again found that *none* of the 1,000 plans yielded a congressional delegation of 10 Republicans and 3 Democrats—the outcome that would have occurred under the 2016 Plan—when he evaluated the sample using Dr. Hofeller's seven-election average. *Id.* at 16–17. A majority of the plans included in the sample (52.9%) would have elected 7 Republicans. *Id.* at 16. Using twenty elections in the Adopted Criteria, a congressional delegation of 10 Republicans and 3 Democrats again occurred in *none* of the simulated plans, with a delegation of 6 (50.3%) or 7 (30.6%) Republicans occurring most frequently. *Id.* Based on these results, Dr. Chen concluded that the General Assembly's desire to avoid pairing incumbents did not explain the 2016 Plan's pro-Republican partisan advantage. *Id.* at 18–19.

To further test the validity of his results, Dr. Chen's third set of simulations sought to match the number of split counties (13) and paired incumbents (2) in the 2016 Plan, rather than minimize such criteria. *Id.* at 19–20. Adhering to these characteristics of the 2016 Plan did not meaningfully alter Dr. Chen's results. In particular, he again found that *none* of the 1,000 plans yielded a congressional delegation of 10 Republicans and 3 Democrats—the outcome that would have occurred under the 2016 Plan—when he evaluated the sample using Dr. Hofeller's seven-election average. *Id.* at 21–22. A majority of the plans included in the sample (53%) would have elected 7 Republicans. *Id.* at 21. Using the twenty elections in the Adopted Criteria, a congressional delegation of 10 Republicans and 3 Democrats again occurred in *none* of the simulated plans, with a delegation of 6 Republicans and 7 Democrats occurring most frequently (52.3%). *Id.* Based on these results, Dr. Chen concluded that the General Assembly's decision not to minimize the number of county splits or paired incumbents could not "have justified the plan's creation of a 10–3 Republican advantage." *Id.* at 20.

Analyzing the results of his three simulation sets as a whole, Dr. Chen concluded that the 2016 Plan "is an extreme statistical outlier in terms of its partisanship." Trial Tr. I, at 213:22–23. He further concluded "that the pursuit of that partisan goal ... of creating a ten Republican map, not only predominated [in] the drawing of the map, but it subordinated the nonpartisan portions of the Adopted Criteria," including the goals of increasing compactness and avoiding county splits. Trial Tr. I, at 158:20–159:2.

***40** Like Dr. Mattingly's analyses, we find that Dr. Chen's analyses provide compelling evidence that the General Assembly intended to subordinate the interests of non-Republican voters in drawing the 2016 Plan. In particular, we find it significant that *none* of the 3,000 simulated districts plans generated by Dr. Chen's computer algorithm, which conformed to all of the traditional nonpartisan districting criteria adopted by the Committee, produced a congressional delegation containing 10 Republican and 3 Democrats—the result the General Assembly intended the 2016 Plan to create, and the result the 2016 Plan in fact created. That the 2016 Plan continued to be an "extreme statistical outlier" in terms of its pro-Republican tilt under three separate specifications of criteria for drawing the simulated plans

reinforces our confidence that Dr. Chen's conclusions reflect stable and valid results.

Legislative Defendants raise two objections to Dr. Mattingly's and Dr. Chen's analyses, neither of which we find undermines the persuasive force of their conclusions. To begin, Legislative Defendants assert that Dr. Mattingly's and Dr. Chen's analyses rest on the "baseless assumption" that "voters vote for the party, and not for individual candidates." Leg. Defs.' Br. 10–11. Although we agree that the quality of individual candidates may impact, to a certain extent, the partisan vote share in a particular election, we do not find that this assumption undermines the probative force of the two simulation analyses, and for several reasons.

To begin, we find it significant that Dr. Mattingly and Dr. Chen used four different sets of actual votes—2012 and 2016 congressional votes in Dr. Mattingly's case and the seven– and twenty-statewide race averages in Dr. Chen's case—and reached essentially the same conclusion. As Legislative Defendants' expert in congressional elections, electoral history, and redistricting Sean Trende acknowledged,[24] Trial Tr. III, at 30:14–15, the sets of votes used by Dr. Mattingly and Dr. Chen included elections in which Republican candidates performed well and elections in which Democratic candidates performed well, Ex. 5101, at 25, 36 (describing 2008 election as a "Democratic wave" and 2010 election as a "Republican wave"). The twenty-race average used by Dr. Chen, in particular, encompassed forty race/candidate combinations occurring over four election cycles, meaning that it reflected a broad variety of candidates and electoral conditions. Given that Dr. Mattingly and Dr. Chen reached consistent results using data reflecting numerous candidates and races—and confirmed those results in numerous sensitivity analyses—we believe that the strength or weakness of individual candidates does not call into question their key findings. That Dr. Chen found that the 2016 Plan produced a 10–Republican, 3–Democrat delegation using Dr. Hofeller's seven-race average and the twenty-race average derived from the Adopted Criteria—the *same* partisan make-up as the congressional delegation elected by North Carolina voters in the 2016 race—further reinforces our confidence that Dr. Mattingly and Dr. Chen's assumption regarding the partisan behavior of voters did not materially impact their results.

***41** Second, Dr. Chen investigated the reasonableness of the assumption Legislative Defendants challenge by analyzing his set of simulated districting plans using VTD-specific predicted Republican and Democratic vote shares generated by a regression model. Ex. 2010, at 26–31. The regression model controlled for incumbency and turnout, factors correlated with candidate quality and electoral conditions. *Id.* at 27. Dr. Chen found that even when controlling for incumbency and turnout on a VTD-by-VTD basis, over 67 percent of his simulated maps yielded a congressional delegation of 7 Republicans and 6 Democrats, and none of his maps produced a delegation of 10 Republicans and 3 Democrats—the outcome the 2016 Plan would have produced. *Id.* at 36. Based on that finding, Dr. Chen reaffirmed his conclusion that the 2016 Plan "could have been created only through a process in which the explicit pursuit of partisan advantage was the predominant factor." *Id.* at 30.

Third, and most significantly, Dr. Mattingly's and Dr. Chen's assumption that Legislative Defendants characterize as "baseless"—that the partisan characteristics of a particular precinct do not materially vary with different candidates or in different races—is the *same assumption* on which the Committee, Representative Lewis, Senator Rucho, and Dr. Hofeller relied in drawing the 2016 Plan. As Dr. Hofeller—who has been involved in North Carolina redistricting for more than 30 years, Ex. 2045, at 525:6–10—testified: "[T]he underlying political nature of the precincts in the state *does not change no matter what race you use to analyze it*." Ex. 2045, at 525:9–10 (emphasis added); Hofeller Dep. 149:5–18. "So once a precinct is found to be a strong Democratic precinct, it's probably going to act as a strong Democratic precinct in every subsequent election. The same would be true for Republican precincts." Ex. 2045, at 525:14–17; *see also* Hofeller Dep. II 274:9–12 ("[I]ndividual VTDs tend to carry ... the *same characteristics through a string of elections*." (emphasis added)). Representative Lewis, Senator Rucho, and the Committee agreed with Dr. Hofeller that, at least in North Carolina, past election results serve as the best predictor of whether, and to what extent, a particular precinct will favor a Democratic or Republican candidate, Ex. 1016, at 30:23–31:2; Rucho Dep. 95:15–16, and therefore directed Dr. Hofeller to use past election results to draw a plan that would elect 10 Republicans and 3 Democrats, *see* Ex. 1007. And Dr. Hofeller, Representative Lewis, and the rest of the Committee relied on past election results—the same

election results upon which Dr. Chen relied—in evaluating whether the 2016 Plan achieved its partisan objective. Ex. 1017 (spreadsheet Representative Lewis presented to the Committee, immediately before it voted to approve the 2016 Plan, showing the partisan performance of the plan using votes cast in twenty previous statewide elections).

Importantly, the past election results upon which both Dr. Hofeller and Representative Lewis relied to assess the 2016 Plan involved different candidates—a composite of seven statewide races in Dr. Hofeller's case and the results of the 2014 Tillis–Hagan Senate race in Representative Lewis' case—than those who ran in the 2016 congressional elections. Legislative Defendants and the expert mapdrawer they employed, therefore, believed that Dr. Mattingly's and Dr. Chen's allegedly "baseless" assumption was sufficiently reasonable, at least in the case of North Carolina, to rely on it to draw the 2016 Plan. Likewise Legislative Defendants' expert in American politics and policy, southern politics, quantitative political analysis, and election administration, Dr. M.V. Hood, III, conceded that he relied on the *same assumption* in assessing the likely partisan performance of the districts created by the 2016 Plan. Trial Tr. IV, at 11:8–12, 71:1–15 (acknowledging that by averaging partisan results of past elections with different candidates, as Dr. Hofeller and Dr. Chen did, "candidate effects are going to average out so we'll get a pretty good fix on what the partisan composition of an area is"). In such circumstances, we cannot say that that assumption calls into question the significant probative force of Dr. Mattingly's and Dr. Chen's analyses, particularly given how extreme a partisan outlier the 2016 Plan was in each of the two analyses.

***42** Legislative Defendants next contend that both sets of simulated maps fail to account for a number of criteria *implicitly* relied upon by the General Assembly, including: that more populous, rather than less populous counties should be divided; that the "core" of the 2011 Plan districts should be retained; that a district line should not traverse a county line more than once; and that, to ensure compliance with the Voting Rights Act, one district should have a BVAP of at least 42 percent and another should have a BVAP of at least 35 percent. Leg. Defs.' FOF 78–86.

None of these alleged criteria were among the seven criteria adopted by the Committee, Ex. 1007, nor are *any* of these criteria mentioned in the legislative record. Additionally, both the Adopted Criteria and the legislative record expressly contradict the purported BVAP threshold criterion, as the Adopted Criteria state that "[d]ata identifying the race of individuals or voters *shall not be used* in the construction or consideration of districts," Ex. 1007 (emphasis added), and Representative Lewis and Dr. Hofeller repeatedly disclaimed any reliance on race or effort to preserve BVAP percentages in the 2016 Plan, *see, e.g.*, Ex. 1016 at 62:9–20; Hofeller Dep. 145:9–12, 146:4–146:8, 183:22–184:8. And even if the General Assembly had implicitly adopted a BVAP threshold criterion—which the record proves it did not—Dr. Mattingly's analysis accounted for that criterion by requiring that any simulated plan included in his final ensemble include one district with a BVAP of at least 40 percent and a second district with a BVAP of at least 33.5 percent. Trial Tr. I, at 41:23–25

The *only* two of the alleged implicit criteria that find *any* support in the record of this case—the alleged criteria requiring preservation of the "cores" of the districts in the 2011 Plan and the division of populous counties—are criteria that would serve to advance the General Assembly's invidious partisan objective. By preserving the "cores" of the districts in the 2011 Plan, the General Assembly perpetuated the partisan effects of a districting plan expressly drawn "to minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate." Hofeller Dep. 127:19–22. And the alleged criterion requiring division of populous counties—which is referenced in a single line of an affidavit provided by Dr. Hofeller after the trial, *see* Ex. 5116, at 5—effectively required "cracking" areas of Democratic strength because more populous counties tend to be Democratic whereas less populous counties tend to be Republican. This is precisely what the 2016 Plan did by dividing populous Democratic counties like Buncombe and Guilford. Exs. 4066, 4068. Given that most of these alleged implicit criteria have no support in the record and the remaining purported criteria work hand-in-hand with the General Assembly's partisan objective, the omission of these purported criteria from Dr. Mattingly's and Dr. Chen's analyses does not in any way call into question the persuasive force of their results.

c.

Finally, although we find the facts and analyses specifically relating to the 2016 Plan sufficient, by themselves, to establish the General Assembly's discriminatory intent, we further note that evidence regarding the drawing and adoption of the *2011 Plan* also speaks to the General Assembly's discriminatory intent in drawing and enacting the *2016 Plan*. Typically, it would be improper for a court to rely on evidence regarding a different districting plan in finding that a redistricting body enacted a challenged plan with discriminatory intent. The "Partisan Advantage" criterion proposed by the Chairs and adopted by the Committee, however, expressly sought to carry forward the partisan advantage obtained by Republicans under the unconstitutional 2011 Plan. Ex. 1007 ("The Committee shall make reasonable efforts to construct districts in the 2016 ... Plan to maintain the current partisan makeup of North Carolina's congressional delegation."). Accordingly, to the extent invidious partisanship was a motivating purpose behind the 2011 Plan, the Committee expressly sought to carry forward—and thereby entrench—the effects of that partisanship.

***43** As with the 2016 Plan, Republicans exclusively controlled the drawing and adoption of the 2011 Plan. The 2011 redistricting effort coincided with the RSLC's REDMAP, in which Dr. Hofeller participated and which sought to "solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives *for the next decade*." Ex. 2015, at ¶ 10; Ex. 2026, at 1 (emphasis added). As chairs of the committees responsible for drawing the 2011 Plan, Representative Lewis and Senator Rucho's "primary goal" was "to create as many districts as possible in which GOP candidates would be able to successfully compete for office." Hofeller Dep. 123:1–7. Defendants conceded as much in the *Harris* litigation, in which Dr. Hofeller stated in an expert report that "[p]olitics was the primary policy determinant in the drafting of the ... [2011] Plan." Ex. 2035, at ¶ 23.

To effectuate the General Assembly's partisan intent, Dr. Hofeller drew the 2011 Plan "to *minimize* the number of districts in which Democrats would have an opportunity to elect a Democratic candidate." Hofeller Dep. 127:19–22 (emphasis added). In particular, Dr. Hofeller "concentrat[ed]" Democratic voters in three districts, Ex. 2043, at 33–34, and thereby "increase[d] Republican voting strength" in five new districts, Hofeller Dep. 116:19–117:25. Notably, the three districts in the 2011 Plan that elected Democratic candidates were the same three districts in the 2016 Plan that elected Democratic candidates, and the ten districts in the 2011 Plan that elected Republican candidates were the same ten districts in the 2016 Plan that elected Republican candidates. Exs. 1018–19. Accordingly, the 2016 Plan carried forward the invidious partisan intent motivating the 2011 Plan.

3.

Legislative Defendants nonetheless argue that the General Assembly failed to act with the requisite discriminatory intent for two reasons: (1) the General Assembly did not seek to "maximize partisan advantage" and (2) the General Assembly adhered to a number of "traditional redistricting criteria," such as compactness, contiguity, and equal population. Neither argument, however, calls into question our finding that Plaintiffs satisfied their burden as to the discriminatory intent requirement.

Legislative Defendants' reliance on the General Assembly's purported lack of intent to "maximize partisan advantage" fails as a matter of both law and fact. As a matter of law, Legislative Defendants cite no authority, controlling or otherwise, stating that a governmental body must seek to "maximize" partisan advantage in order to violate the Equal Protection Clause. To be sure, the Supreme Court has indicated that evidence that a legislative body sought to maximize partisan advantage would prove that the legislature acted with discriminatory intent. *See Gaffney*, 412 U.S. at 751, 93 S.Ct. 2321 ("A districting plan may create multimember districts perfectly acceptable under equal population standards, but invidiously discriminatory because they are employed to 'minimize or cancel out the voting strength of racial or political elements of the voting population.' " (quoting *Fortson v. Dorsey*, 379 U.S. 433, 439, 85 S.Ct. 498, 13 L.Ed.2d 401 (1965)); *Vieth*, 541 U.S. at 316, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment) ("If a State passed an enactment that declared 'All future apportionment shall be drawn so as most to burden Party X's rights to fair and effective representation, though still in accord with one-person, one-vote principles,' we would surely conclude the Constitution had been violated.").

That does not mean, however, that to establish a constitutional violation a plaintiff *must* prove that a districting body sought to maximize partisan advantage. The Supreme Court does not require that a redistricting plan maximally malapportion districts for it to violate the one-person, one-vote requirement. Nor does the Supreme Court require that a redistricting plan maximally disadvantage voters of a particular race to constitute an unconstitutional racial gerrymander. And in the context of partisan gerrymandering, in particular, Justice Kennedy has rejected a "maximization" requirement, explaining that a legislature is "culpable" regardless of whether it engages in an "egregious" and "blatant" effort to "capture[ ] every congressional seat" or "proceeds by a more subtle effort, capturing less than all seats." *Vieth*, 541 U.S. at 316, 124 S.Ct. 1769.

***44** Another basis for not imposing a maximization requirement is that, in the context of a partisan gerrymander, what constitutes "maximum partisan advantage" is elusive, and turns on political strategy decisions that courts are ill suited to render. A party may not seek to maximize the number of seats a redistricting plan could allow it to win in a particular election because, by spreading out its supporters across a number of districts to achieve such a goal, its candidates would face a greater risk of losing either initially or in subsequent elections. *See* Bernard Grofman & Thomas Brunnell, *The Art of the Dummymander*, *in* Redistricting in the New Millennium 192–93 (Peter F. Galderisi ed., 2005) (finding, for example, that North Carolina's 1991 decennial redistricting plan, which was drawn by a Democrat-controlled General Assembly, created districts with sufficiently narrow margins in favor of expected Democratic voters that Republicans were able capture seats later in the decade). Accordingly, different partisan redistricting bodies may have different perspectives on what constitutes maximum partisan advantage.

As a matter of fact, Plaintiffs presented compelling evidence that the General Assembly *did* seek to maximally burden voters who were likely to support non-Republican candidates. Most significantly, in explaining the proposed Partisan Advantage criterion to the Committee, Representative Lewis said that he "propose[d] that [the Committee] draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because *[he] d[id] not believe it[would be] possible to draw a map with 11 Republicans and 2 Democrats*." Ex. 1005, at 50:7–10 (emphasis added). Legislative Defendants assert that this statement establishes that Representative Lewis *did not* draw the map to maximize partisan advantage because he did not believe that it would be possible to draw a plan that could elect 11 Republicans without violating other criteria, "such as keeping ... counties whole and splitting fewer precincts." Leg. Defs.' Br. 5. Put differently, Legislative Defendants maintain that the 2016 Plan's adherence to other traditional redistricting criteria establishes that the General Assembly did not pursue maximum partisan advantage. *Id.*

But Representative Lewis acknowledged during his deposition that had the 2016 Plan split a large number of precincts and counties, as the 2011 Plan did, there was a significant risk that the *Harris* court would "throw it out" on grounds that it failed to remedy the racial gerrymander. Lewis Dep. 166:13–168:8. Accordingly, Representative Lewis's testimony indicates that he believed the 2016 Plan offered the maximum lawful partisan advantage—the maximum partisan advantage that could be obtained without risking that the *Harris* court would "throw" the plan out as perpetuating the constitutional violation.

Dr. Mattingly's and Dr. Chen's analyses further evidence that the 2016 Plan reflected an effort to maximize partisan advantage. In particular, when Dr. Mattingly evaluated his 24,518–plan ensemble using the votes cast in North Carolina's 2012 congressional election, *none* of the plans produced an 11–2 pro-Republican partisan advantage. Ex. 3040, at 7. And Dr. Mattingly found the same result when he used votes from the 2016 election—*none* of the simulated plans produced an 11–2 partisan advantage. *Id.* at 19. Likewise, regardless of whether Dr. Chen applied the seven-race formula used by Dr. Hofeller or the twenty-race formula adopted by the Committee, none of his 3,000 simulated plans produced a 10–3 pro-Republican partisan advantage, let alone an 11–2 partisan advantage. Ex. 2010, at 12, 16, 21, 36–37.

Finally, the facts and circumstances surrounding the drawing and enactment of the 2011 Plan—the partisan effects of which the Committee expressly sought to carry forward in the 2016 Plan, Ex. 1007—further establish that the General Assembly drew the 2016 Plan to maximize partisan advantage. In particular, Representative Lewis and Senator Rucho's "primar[y] goal" in drawing the 2011 Plan was "to create *as many districts as possible* in which GOP candidates would be able to successfully compete

for office." Hofeller Dep. 123:1–7 (emphasis added). And, in accordance with that goal, Dr. Hofeller testified that he drew the plan "to *minimize* the number of districts in which Democrats would have an opportunity to elect a Democratic candidate." *Id.* at 127:19–22 (emphasis added).

***45** Nor does the General Assembly's reliance on a number of traditional redistricting criteria undermine our finding that invidious partisan intent motivated the 2016 Plan. As a matter of law, the Supreme Court long has held that a state redistricting body can engage in unconstitutional partisan gerrymandering even if it complies with the traditional redistricting criterion of population equality. *Gaffney*, 412 U.S. at 751, 93 S.Ct. 2321. More recently, the Supreme Court rejected an identical argument in a racial gerrymandering case, holding that "inconsistency between the [challenged] plan and traditional redistricting criteria *is not a threshold requirement*" to establish such a claim. *Bethune–Hill v. Va. State Bd. of Elections*, —— U.S. ——, 137 S.Ct. 788, 799, 197 L.Ed.2d 85 (2017) (emphasis added). The rationale supporting the *Bethune–Hill* Court's refusal to allow compliance with traditional redistricting criteria to immunize a plan from scrutiny under the Equal Protection Clause is equally compelling in the partisan gerrymandering context. As the *Whitford* Court explained in holding that compliance with traditional redistricting criteria is not a "safe harbor" from a partisan gerrymandering claim, "[h]ighly sophisticated mapping software now allows lawmakers to pursue partisan advantage without sacrificing compliance with traditional districting criteria." 218 F.Supp.3d at 889. "A map that appears congruent and compact to the naked eye may in fact be an intentional and highly effective partisan gerrymander." *Id.*

As a matter of fact, the 2016 Plan does not conform to all traditional redistricting principles. Although the plan is equipopulous, contiguous, improves on the compactness of the 2011 Plan, and reduces the number of county and precinct splits relative to the 2011 Plan, the 2016 Plan fails to adhere to the traditional redistricting principle of "maintaining the integrity of political subdivisions." *Harris*, 136 S.Ct. at 1306. In particular, Legislative Defendants' expert Dr. Hood conceded that the 2016 Plan divided numerous political subdivisions, *see, e.g.*, Trial Tr. IV, at 41:2–18, 42:6–43:4, including the City of Asheville, Buncombe County, Cumberland County, the City of Greensboro, Guilford County, Johnston County, the City of Charlotte, Mecklenburg County, and Wake County, Exs. 4066–70, 4072. Notably, the Committee voted, on a party-line basis, against adopting a proposed criterion that would have directed the mapdrawers to make reasonable efforts to respect the lines of political subdivisions and preserve communities of interest. *See* Ex. 1006, at 27–28. The division of political subdivisions allowed the General Assembly to achieve its partisan objectives, by packing non-Republican voters in certain districts and submerging non-Republican voters in majority-Republican districts. Trial Tr. IV, at 41:2–18, 42:6–43:4.

* * * * *

In sum, we find that Plaintiffs presented more-than-adequate evidence to satisfy their burden to demonstrate that the General Assembly was motivated by invidious partisan intent in drawing the 2016 Plan. Although we do not believe the law requires a finding of predominance, we nonetheless find that Plaintiffs' evidence—particularly the facts and circumstances surrounding the drawing and enactment of the 2016 Plan and Dr. Mattingly's and Dr. Chen's analyses—establish that the pursuit of partisan advantage predominated over the General Assembly's non-partisan redistricting objectives. And given that Dr. Chen found that the General Assembly's desire to protect incumbents and express refusal to try to avoid dividing political subdivisions failed to explain the 2016 Plan's partisan bias, we find that Plaintiffs' evidence distinguishes between permissible redistricting objectives that rely on political data or consider partisanship, and what instead here occurred: invidious partisan discrimination.

B.

Having concluded that the General Assembly intended to discriminate against voters who supported or were likely to support non-Republican candidates, we now must determine whether the 2016 Plan achieved its discriminatory objective.

1.

The discriminatory effects prong is the principal reason the Supreme Court has failed to agree on a standard for proving a partisan gerrymandering claim. For nearly two decades, the plurality opinion in *Bandemer* provided what was widely treated as the controlling test for determining whether a redistricting plan had the effect of discriminating against voters based on their partisan affiliation. *See, e.g.*, *Pope*, 809 F.Supp. at 395 ("[The *Bandemer*] plurality opinion must be considered controlling as the position which concurs in the judgment on the narrowest grounds."). In *Bandemer*, a group of Indiana Democrats sued Indiana state officials alleging that the State's decennial state legislative redistricting—which was enacted by a Republican-controlled legislature and approved by a Republican governor—violated the Equal Protection Clause by intentionally discriminating against Democrats, notwithstanding that the plan satisfied the one-person, one-vote requirement. 478 U.S. at 113–14, 106 S.Ct. 2797 (plurality op.). As evidence of the districting plan's discriminatory effects, the plaintiffs alleged that the legislature drew district lines that packed Democratic voters into certain districts and fragmented Democratic votes in other districts in order to debase Democratic voting strength. *Id.* at 115, 106 S.Ct. 2797. Additionally, the legislature allegedly used multi-member districts to further diminish Democrats' voting strength. *Id.* In the first election following the redistricting, Democratic candidates received 51.9 percent of the vote but won 43 percent (43 of 100) of the seats in the state House. *Id.* In the Senate, Democratic candidates received 53.1 percent of the vote, and won 52 percent (13 of 25) of the seats up for election. *Id.*

***46** Writing for a four-Justice plurality, Justice White stated that a partisan gerrymandering plaintiff must prove that it "has been unconstitutionally denied its chance to effectively influence the political process" or that the "electoral system [has been] arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole." *Id.* at 132–33, 142–43, 106 S.Ct. 2797. Because legislators are presumed to represent all of their constituents, "even in a safe district where the losing group loses election after election," a "mere lack of proportional representation will not be sufficient to prove unconstitutional representation." *Id.* at 132, 106 S.Ct. 2797. Rather, a plaintiff must provide evidence "of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process." *Id.* at 133, 106 S.Ct. 2797.

Applying this test, the plurality concluded the plaintiffs failed to meet their burden. *Id.* at 134, 106 S.Ct. 2797. In particular, the plurality stated that the results of a single election were insufficient to demonstrate that Indiana Democrats would be relegated to minority status throughout the decade, particularly because Indiana was a "swing [s]tate" and voters would "sometimes prefer Democratic candidates, and sometimes Republican." *Id.* at 135, 106 S.Ct. 2797. The plurality further emphasized that the district court did not find that the redistricting plan would preclude Democrats from taking control of the assembly in a subsequent election, nor did the district court ask "by what percentage the statewide Democratic vote would have had to increase to control either the House or the Senate." *Id.* And the plaintiffs provided no proof that the redistricting plan would "consign the Democrats to a minority status in the Assembly throughout the [decade]." *Id.*

The *Bandemer* plurality's discriminatory effects test proved virtually impossible for future plaintiffs to satisfy. *See, e.g.*, *Pope*, 809 F.Supp. at 397 (dismissing partisan gerrymandering action because the plaintiffs did "not allege, nor c[ould] they, that the state's redistricting plan ... caused them to be 'shut out of the political process' " or that they had "been or w[ould] be consistently degraded in their participation in the entire political process"); *Badham v. Eu*, 694 F.Supp. 664, 670 (N.D. Cal. 1988) (dismissing partisan gerrymandering claim because the plaintiffs failed to allege any "interfer[ence] with [the allegedly disfavored party's] registration, organizing, voting, fund-raising, or campaigning" or that the interests of supporters of the disfavored party were "being 'entirely ignore[d]' by their congressional representatives" (third alteration in original) (quoting *Bandemer*, 478 U.S. at 132, 106 S.Ct. 2797)). As one commentator explained, "by its impossibly high proof requirements the Court in *Bandemer* essentially eliminated political gerrymandering as a meaningful cause of action, but only after it had essentially declared the practice unconstitutional." John Hart Ely, *Gerrymanders: The Good, the Bad, and the Ugly*, 50 Stan. L. Rev. 607, 621 (1998); *see also* Samuel Issacharoff, Pamela S. Karlan & Richard H. Pildes, The Law of Democracy 563 (1998) ("*Bandemer* has served almost exclusively as an invitation to litigation without much prospect of redress.").

In *Vieth*, all of the Justices rejected *Bandemer*'s discriminatory effects test. 541 U.S. at 283, 124 S.Ct. 1769 (plurality op.) ("Because this standard was misguided when proposed [and] has not been improved in subsequent application, ... we decline to affirm it as a constitutional requirement."); *id.* at 308, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment); *id.* at 318, 339, 124 S.Ct. 1769 (Stevens, J., dissenting); *id.* at 344–45, 124 S.Ct. 1769 (Souter, J., dissenting); *see id.* at 360, 124 S.Ct. 1769 (Breyer, J., dissenting). And the Justices appeared to agree that one of the principal problems with the *Bandemer* plurality's discriminatory effects test is that it created an evidentiary standard so high that no plaintiff could satisfy it, even in the face of strong evidence of partisan discrimination. *See id.* at 280–81, 124 S.Ct. 1769 (plurality op.) (noting that under *Bandemer*'s test, "several districting plans ... were upheld despite allegations of extreme partisan discrimination, bizarrely shaped districts, and disproportionate results"); *id.* at 312, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment) (rejecting *Bandemer*'s effects test as establishing "a single, apparently insuperable standard"); *id.* at 344–45, 124 S.Ct. 1769 (Souter, J., dissenting) (rejecting *Bandemer* effects test on grounds that it "required a demonstration of such pervasive devaluation over such a period of time as to raise real doubt that a case could ever be made out").

***47** In light of *Vieth*'s rejection of *Bandemer*'s discriminatory effects test—and the Supreme Court's failure to agree on a replacement—there is an absence of authority regarding the evidentiary burden a plaintiff must meet to prove that a districting plan discriminates against voters who are likely to support a disfavored candidate or party. League Plaintiffs propose that to prove that a districting plan has a discriminatory effect, a plaintiff must demonstrate that the plan "exhibits a large and durable partisan asymmetry." League Br. 10. League Plaintiffs assert that their proposed magnitude requirement would ensure that courts do not unduly intrude on a state districting efforts. *Id.* at 11. And according to League Plaintiffs, the durability requirement speaks to one of the Court's principal concerns with partisan gerrymandering: entrenchment. *Id.* at 11–12. By contrast, although Common Cause Plaintiffs concede that a plaintiff must prove that a districting plan "burden[ed]" the rights of supporters of a disfavored candidate, they assert that neither "the Constitution [n]or controlling precedent require either a large or a durable effect before the Court can intervene." Common Cause Br. 4.

[30] **[31]** Drawing on the Supreme Court's definition of "partisan gerrymandering," we conclude that to meet the discriminatory effects requirement, the Equal Protection Clause demands that a partisan gerrymandering plaintiff show that a challenged districting plan "subordinate[s the interests] of one political party and entrench[es] a rival party in power." *Ariz. State Leg.*, 135 S.Ct. at 2658. A plaintiff proves a districting plan "subordinates" the interests of supporters of a disfavored candidate party by demonstrating that the redistricting plan is biased against such individuals. The bias requirement reflects the Equal Protection Clause's animating dictate that states must govern "impartially"—that "the State should treat its voters as standing in the same position, regardless of their political beliefs or party affiliation." *Davis*, 478 U.S. at 166, 106 S.Ct. 2797 (Powell, J., concurring in part and dissenting in part).

[32] The entrenchment requirement addresses another principal constitutional concern with partisan gerrymandering—that it insulates legislators from popular will and renders them unresponsive to portions of their constituencies. *See Reynolds*, 377 U.S. at 565, 84 S.Ct. 1362 ("Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsible to the popular will."). As the Supreme Court explained with regard to racial gerrymanders, "[w]hen a district obviously is created solely to effectuate the perceived common interests of one ... group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole." *Shaw I*, 509 U.S. at 648, 113 S.Ct. 2816. To prove entrenchment, a plaintiff need not meet *Bandemer*'s "apparently insuperable standard," *id.* at 312, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment), which required a showing that supporters of a disfavored party had been entirely ignored by their representatives and for years had been frozen out of key aspects of the political process. Instead, a plaintiff must show that a districting plan's bias towards a favored party is likely to persist in subsequent elections such that an elected representative from the favored party will not feel a need to be responsive to constituents who support the disfavored party.

2.

[33] We find that Plaintiffs satisfied their burden under the discriminatory effects prong by proving the 2016 Plan dilutes the votes of non-Republican voters and entrenches Republican control of the state's congressional delegation. In reaching this conclusion we rely on the following categories of evidence: (a) the results of North Carolina's 2016 congressional election conducted using the 2016 Plan; (b) expert analyses of those results revealing that the 2016 Plan exhibits "extreme" partisan asymmetry; (c) Dr. Mattingly's and Dr. Chen's simulation analyses; and (d) the results of North Carolina's 2012 and 2014 elections using the 2011 Plan—the partisan effects of which the General Assembly expressly sought to carry forward when it drew the 2016 Plan—and empirical analyses of those results.

a.

***48** We begin with the results of North Carolina's 2016 congressional election conducted under the 2016 Plan. The General Assembly achieved its goal: North Carolina voters elected a congressional delegation of 10 Republicans and 3 Democrats. Exs. 1018, 3022. That the 2016 Plan resulted in the outcome Representative Lewis, Senator Rucho, Dr. Hofeller, and the General Assembly intended proves both that the precinct-level election data used by the mapdrawers served as a reliable predictor of the 2016 Plan's partisan performance and that the mapdrawers effectively used that data to draw a districting plan that perfectly achieved the General Assembly's partisan objectives.

Following the 2016 election, Republicans hold 76.9 percent of the seats in the state's thirteen-seat congressional delegation, whereas North Carolina voters cast 53.22 percent of their votes for Republican congressional candidates. Ex. 3022. Notably, the *Whitford* court found that less significant disparities between the favored party's seat-share and vote-share (60.7% v. 48.6% and 63.6% v. 52%) provided evidence of a challenged districting plan's discriminatory effects. 218 F.Supp.3d at 901. As the court explained, "[i]f it is true that a redistricting 'plan that more closely reflects the distribution of state party power seems a less likely vehicle for partisan discrimination,' ... then a plan that deviates this strongly from the distribution of statewide power suggests the opposite." *Id.* at 902 (quoting *LULAC*, 548 U.S. at 419, 126 S.Ct. 2594 (opinion of Kennedy, J.)).

The results of the 2016 election also reveal that the 2016 Plan "packed" and "cracked" voters who supported Republican candidates. In particular, in the three districts in which Democratic candidates prevailed, the Democratic candidates received an average of 67.95 percent of the vote, whereas Republican candidates received an average of 31.24 percent of the vote. *See* Ex. 3022. By contrast, in the ten districts in which Republican candidates prevailed, the Republican candidates received an average of 60.27 percent of the vote, and Democratic candidates received an average of 39.73 percent of the vote. *See id.* Democratic candidates, therefore, consistently won by larger margins than Republican candidates. Additionally, the Democratic candidate's margin in the *least* Democratic district in which a Democratic candidate prevailed (34.04%) was nearly *triple* that of the Republican candidate's margin in the *least* Republican district in which a Republican candidate prevailed (12.20%), *see id.*, reflecting the "S-shaped curve" that Dr. Mattingly described as "the signature of [partisan] gerrymandering," Trial Tr. I, at 76:18–77:5.

And the results of the 2016 congressional election establish that the 2016 Plan's discriminatory effects likely will persist through multiple election cycles. To begin, the Republican candidate's vote share (56.10%) and margin of victory (12.20%) in the *least* Republican district electing a Republican candidate, District 13, exceed the thresholds at which political science experts, including Legislative Defendants' expert Dr. Hood, consider a seat to be "safe"—*i.e.*, highly unlikely to change parties in subsequent elections. *See* Ex. 5058, at 25, Trial Tr. IV, at 29:16–22, 86:21–88:5; *LULAC*, 548 U.S. at 470–71, 126 S.Ct. 2594 (Stevens, J., dissenting in part) (characterizing 10 percent advantage as a threshold for a "safe" seat and explaining that "[m]embers of Congress elected from such safe districts need not worry much about the possibility of shifting majorities, so they have little reason to be responsive to political minorities in their district"). Indeed, all of the districts—including all ten Republican districts—in the 2016 Plan are "safe" under that standard. Ex. 3022.

***49** Additionally, Dr. Simon Jackman—a professor of political science at the University of Sydney and expert

in statistical methods in political science, elections and election forecasting, and American political institutions, Trial Tr. II, at 32:5–9—performed a "uniform swing analysis," which is used by both researchers and courts to assesses the sensitivity of a districting plan to changing electoral conditions, Ex. 4002, at 15–16, 54–59; *Whitford*, 218 F.Supp.3d at 899–903. To conduct his uniform swing analysis, Dr. Jackman took the two-parties' statewide vote share in the 2016 election, and then shifted those shares by one-percent increments ranging from 10 percent more Republican to 10 percent more Democratic. Ex. 4002, at 54. The analysis assumed that votes shift in all districts by the same amount. *Id.* Dr. Jackman found that "[i]f Democrats obtained a statewide, uniform swing of even six points—taking Democratic share of the two-party vote to 52.7%—*no seats would change hands relative to the actual 2016 results*." *Id.* at 59 (emphasis added). Accordingly, even if Democratic candidates obtained a 52.7 percent of the statewide vote, they would comprise only 23.1 percent of the state's congressional delegation. And if Democratic candidates captured the *same percentage* of the vote (53.22%) that elected Republican candidates in ten districts in 2016, Democratic candidates would prevail in only four districts. Ex. 3022.

b.

We also find that other analyses performed by Dr. Jackman assessing the 2016 Plan's "partisan asymmetry"—whether supporters of each of the two parties are able to translate their votes into representation with equal ease—provide additional evidence of the 2016 Plan's discriminatory effects. Trial Tr. II, at 34:20–22 (explaining that a redistricting plan exhibits partisan asymmetry if there is "a gap between the parties with respect to the way their votes are translated into seats"). The concept of partisan symmetry, at least in its modern form, dates to the 1970s, but scholars did not begin to widely view it as a measure of partisan gerrymandering until the last 20 years. *Id.* at 33:24–34:11. Dr. Jackman analyzed three standard measures of partisan symmetry: (i) the "efficiency gap," (ii) "partisan bias," and (iii) "the mean-median difference." *Id.* at 34:13–17.

i.

The efficiency gap, which was the focus of Dr. Jackman's report and is the newest measure of partisan asymmetry, evaluates whether a districting plan leads supporters of one party to "waste" more votes than supporters of the other. Ex. 4002, at 5. The concept of "wasted" votes derives from two of the principal mechanisms mapdrawers use to diminish the electoral power of a disfavored party or group: (1) packing—concentrating members or supporters of the party or group in a limited number of districts—and (2) cracking—dispersing members or supporters of the party or group across a number districts so that they are relegated to minority status in each of those districts. Trial Tr. II, at 45:19–46:11. "Wasted" votes are votes cast for a candidate in excess of what the candidate needed to win a given district, which increase as more voters supporting the candidate are "packed" into the district, *or* votes cast for a losing candidate in a given district, which increase, on an aggregate basis, when a party's supporters are "cracked." [25] *Id.* at 35:9–23, 45:19–46:11.

Dr. Jackman calculated the efficiency gap by subtracting the sum of one party's wasted votes in each district in a particular election from the sum of the other party's wasted votes in each district in that election and then dividing that figure by the total number of votes cast for all parties in all districts in the election. Ex. 4002, at 18; Ex. 4078. Efficiency gaps close to zero, which occur when the two parties waste approximately the same number of votes, reflect a districting plan that does not favor, invidiously or otherwise, one party or the other.

Using the results of the 2016 congressional elections conducted under the 2016 Plan, Dr. Jackman calculated an efficiency gap favoring Republican candidates of 19.4 percent. [26] Ex. 4002, at 7–8. That constituted the third largest efficiency gap (pro-Republican or pro-Democratic) in North Carolina since 1972, surpassed only by the efficiency gaps exhibited in the 2012 and 2014 elections using the 2011 Plan. Trial Tr. II, at 54:21–24.

***50** To put the 19.4 percent figure further in perspective, Dr. Jackman estimated the efficiency gaps for 512 congressional elections occurring in 25 states [27] between 1972 and 2016. [28] He determined that the distribution of those efficiency gaps was normal with its mean and median centered on zero, meaning that, on average, the districting plans in his sample did not tend to favor either

party. Ex. 4002, at 26–28. Dr. Jackman found that North Carolina's 2016 congressional election under the 2016 Plan yielded the 13th most pro-Republican efficiency gap of the 512 elections in the database, and that 95 percent of the plans in the database had efficiency gaps that were smaller in magnitude (in favor of either Republicans or Democrats). *Id.* at 7, 65. Dr. Jackman also calculated the average efficiency gap for the 136 unique districting plans included in his 512–election database, and found that the 2016 Plan produced the fourth-largest average efficiency gap of the 136 plans. *Id.* at 10; Trial Tr. II, at 60:15–17. And Dr. Jackman compared North Carolina's efficiency gap in 2016 with that of 24 other states for which his database contained 2016 data, finding that the 2016 Plan produced the largest efficiency gap of any of those plans. Ex. 4002, at 9.

To further put the 19.4 percent figure in context, Dr. Jackman used his database of elections to analyze what magnitude of efficiency gap would likely lead to at least one congressional seat changing hands—a "politically meaningful" burden on a disfavored party's supporters. Ex. 4002, at 37; Trial Tr. II, at 64:6–12. Dr. Jackman found that in states with congressional delegations with 7 to 15 representatives, like North Carolina, an 8 percent efficiency gap is associated with at least one seat likely changing hands.[29] Ex. 4002, at 39–41. Under that threshold, North Carolina's 2016 efficiency gap of 19.4 percent indicates that the 2016 Plan allowed Republicans to prevail in at least one more district than they would have in an unbiased plan. Based on these results, Dr. Jackman concluded that the 2016 Plan creates "a systematic advantage for Republican candidates," *id.* at 62, and that that advantage "is generating tangible consequences in terms of seats being won," Trial Tr. IIII, at 82:13–16.

***51** Dr. Jackman also sought to test whether, given the magnitude of North Carolina's 2016 efficiency gap, the pro-Republican bias of the 2016 Plan is likely to persist in future elections. To do so, he performed regressions using his multi-state dataset to analyze the relationship between the first efficiency gap observed in the first election conducted under a particular districting plan and the average efficiency gap over the remaining elections in which that plan was used. Ex. 4002, at 47–54. Using data from the 108 plans in his dataset that were used in at least three elections, Dr. Jackman estimated that a plan with an initial efficiency gap of 19.4 percent in favor of a particular party, like the 2016 Plan, likely would have an 8 percent average efficiency gap in favor of the same party in the remaining elections conducted under the plan, with the plan resulting in an average efficiency gap in that same party's favor over 90 percent of the time. *Id.* at 47. When Dr. Jackman restricted his data set to the 44 plans that have been used at least three times since 2000, he found that an efficiency gap of 19.4 percent in favor of one party would likely have a 12 percent efficiency gap in that party's favor over the remainder of the plan's use. *Id.* Based on these analyses, Dr. Jackman concluded that the evidence "strongly suggests" that the 2016 Plan "will continue to produce large, [pro-Republican] efficiency gaps (if left undisturbed), generating seat tallies for Democrats well below those that would be generated from a neutral districting plan." *Id.* at 66.

Additionally, Dr. Jackman evaluated the likely persistence of the 2016 Plan's pro-Republican bias by conducting a uniform swing analysis and determining the size of pro-Democratic swing necessary to eliminate the 2016 Plan's pro-Republican efficiency gap. *Id.* at 54–60. Dr. Jackman found that it would require a uniform swing of approximately 9 percentage points in Democrats' favor—on the order of the 1974 post-Watergate swing in favor of Democrats, the largest pro-Democratic swing that has occurred in North Carolina since 1972—for the efficiency gap to return to zero, and therefore for the 2016 Plan to lose its pro-Republican bias. *Id.* at 55–59. Based on these analyses, Dr. Jackman concluded that the 2016 Plan's pro-Republican efficiency gap "is durable," and that it would require a swing of votes in Democratic candidates' favor of "historic magnitude" to strip the 2016 Plan of its pro-Republican bias. Trial Tr. II, at 54:24–55:9; *see also* Ex. 4002, at 66 (concluding that the 2016 Plan's large, pro-Republican efficiency gap is "likely to endure over the course of the plan").

Legislative Defendants raise several objections to Dr. Jackman's efficiency gap analysis: (1) the efficiency gap cannot be applied in all states; (2) the efficiency gap is a measure of "proportional representation," and therefore is foreclosed by controlling Supreme Court precedent; (3) there are several problems with Dr. Jackman's efficiency gap thresholds for identifying when a particular plan is biased towards one party and when that bias is likely to persist; (4) the efficiency gap does not account for a variety of idiosyncratic factors that play a significant role in determining election outcomes; (5) the efficiency gap

fails to flag as unconstitutional certain districting plans that bear certain hallmarks of a partisan gerrymander; (6) the efficiency gap cannot be administered prospectively, making it impossible for a legislature to predict whether a districting plan will violate the Constitution; and (7) the efficiency gap does not encourage mapmakers to draw more competitive districts. Leg. Defs.' FOF 62–66. Although we do not entirely discount all of these objections, we find that they do not individually, or as a group, materially undermine the persuasive force of Dr. Jackman's efficiency gap analysis regarding the 2016 Plan.

Dr. Jackman concedes that the sensitivity of the efficiency gap in jurisdictions with only a few districts—in the case of congressional districts, states with six or fewer districts—renders it difficult, if not impossible, to apply. *See* Ex. 4002, at 19. According to Legislative Defendants, this limitation requires this Court to categorically reject the efficiency gap as a measure of partisan gerrymandering because "[i]t would be untenable for a court to impose a constitutional standard on one state that literally cannot be imposed or applied in all other states." Leg. Defs.' Br. 10. But League Plaintiffs do not propose that this Court constitutionalize the efficiency gap—nor does this Court do so. Rather, League Plaintiffs argue—and this Court finds—that Dr. Jackman's efficiency gap analysis provides *evidence* that Defendants violated the governing constitutional standard: that a redistricting body must not adopt a districting plan that intentionally subordinates the interests of supporters of a disfavored party and entrenches a favored party in power. *See supra* Parts II.B.2.b. That constitutional standard does not vary with the size of a state's congressional delegation. In states entitled to a small number of representatives, a partisan gerrymandering plaintiff simply will have to rely on different types of *evidence* to prove that the redistricting body violated that constitutional standard. Importantly, in addition to the efficiency gap, this Court relies on a variety of other types of evidence probative of the 2016 Plan's discriminatory effects, much of which could be relied on in states with a smaller number of congressional districts.

***52** **[34]** Legislative Defendants also are correct that the Constitution does not entitle supporters of a particular party to representation in a state's congressional delegation in proportion to their statewide vote share. *See LULAC*, 548 U.S. at 419, 126 S.Ct. 2594 (opinion of Kennedy, J.) ("To be sure, there is no constitutional requirement of proportional representation ...."). But the efficiency gap, like other measures of partisan asymmetry, does not dictate strict proportional representation. Trial Tr. II, at 48:21–50:7; Trial Tr. III, at 70:5–7. In particular, the efficiency gap permits a redistricting body to choose to draw a districting plan that awards the party that obtains a bare majority of the statewide vote a larger proportion of the seats in the state's congressional delegation (referred to as a "winner's bonus"). The efficiency gap, therefore, is not premised on strict proportional representation, but rather on the notion that the magnitude of the winner's bonus should be the same for both parties. Trial Tr. II, at 49:8–17 (Dr. Jackman explaining that partisan symmetry is a "weaker property" than proportional representation because "[a]ll it insists on is that the mapping from votes into seats is the same for both sides of politics"). Even if the efficiency gap did amount to a measure of proportional representation, "[t]o say that the Constitution does not require proportional representation is not to say that highly *dis*proportionate representation may not be evidence of a discriminatory effect." *Whitford*, 218 F.Supp.3d at 906–07. On the contrary, a number of Justices have concluded that disproportionate representation constitutes evidence, although not conclusive evidence, of a redistricting plan's discriminatory effects—the same way in which we treat Dr. Jackman's efficiency gap evidence. *LULAC*, 548 U.S. at 419, 126 S.Ct. 2594 (opinion of Kennedy, J.) ("[A] congressional plan that more closely reflects the distribution of state party power seems a less likely vehicle for partisan discrimination than one that entrenches an electoral minority."); *Bandemer*, 478 U.S. at 132, 106 S.Ct. 2797 (plurality op.) ("[A] failure of proportional representation *alone* does not constitute impermissible discrimination under the Equal Protection Clause." (emphasis added)).

As to Dr. Jackman's proposed thresholds, Legislative Defendants are correct that in *Whitford* Dr. Jackman used a different method for calculating an efficiency gap [30] and found "that an efficiency gap above 7% in any districting plan's first election year will continue to favor that party for the life of the plan." 218 F.Supp.3d at 905. By contrast, here Dr. Jackman concluded that, in states like North Carolina with 7 to 14 representatives, a 12 percent first-year efficiency gap indicates that the districting plan's partisan bias will persist in subsequent elections. Ex. 4002, at 51–54. Even under the more conservative threshold Dr. Jackman proposes in this case, approximately one-

third of the post–2000 districting plans in such states that would trip Dr. Jackman's threshold did not have an average remainder-of-the-plan efficiency gap of sufficient magnitude to establish that the districting plan deprived the disfavored party of at least one seat. *Id.* at 53. We agree with Legislative Defendants that this error rate weighs against constitutionalizing Dr. Jackman's proposed thresholds. But we do not constitutionalize Dr. Jackman's efficiency gap thresholds. And given (1) that the magnitude of the 2016 Plan's efficiency gap in the 2016 congressional election (19.4 percent) significantly exceeded either threshold, (2) that most plans in Dr. Jackman's database that exceeded his proposed threshold continued to exhibit a meaningful bias throughout their life, and (3) that numerous other pieces of evidence provide proof of the 2016 Plan's discriminatory effects, we do not believe this concern strips Dr. Jackman's analyses of their persuasive force in this case. *See Whitford*, 218 F.Supp.3d at 907–08 (acknowledging different methods of calculating the efficiency could prove problematic in other cases but nonetheless relying on efficiency gap evidence because challenged legislative districting plan was not "at the statistical margins" and "both methods yield[ed] an historically large, pro-Republican [efficiency gap]").

***53** Legislative Defendants next assert that the efficiency gap, as a "mathematical formula," does not take into account a number of idiosyncratic considerations that effect the outcome of particular elections, such as "the quality of ... candidates, the amount of money raised, the impact of traditional districting principles on election results, whether Democratic voters are more concentrated than Republican voters, and the impact of wave elections." Leg. Defs.' FOF 65. We agree that each of these considerations may impact the outcome of a particular election. But we reject Legislative Defendants' assertion that Dr. Jackman's conclusion that the 2016 Plan is an extreme partisan outlier does not account for these contest-specific factors. On the contrary, Dr. Jackman reached his conclusion by comparing the 2016 Plan's efficiency gap with efficiency gaps observed in the other 512 elections in his database. That database comprises results from 512 elections occurring in 25 states over a 44–year period. As Dr. Jackman explained, "all of those [election-specific] factors appeared in those 512 elections," including the Watergate and 1994 wave elections, candidates facing political scandals, candidates who were well-funded or poorly funded, states with political geography favoring one party or the other, and unique candidates at the top of the ballot like President Obama and President Trump. Trial Tr. IIII, at 69:5–18. Accordingly, comparing the 2016 Plan's efficiency gap to those observed in hundreds of other elections allowed Dr. Jackman to conclude that the election-specific factors that Legislative Defendants highlight do not explain the large magnitude of the 2016 Plan's pro-Republican efficiency gap.

Relatedly, Legislative Defendants contend that Dr. Jackman's proposed efficiency thresholds flag several bipartisan districting plans or districting plans drawn by courts or nonpartisan commissions and fail to flag as partisan gerrymanders a number of districting plans that bear other hallmarks of gerrymandering such as irregular shapes and widespread division of political subdivisions and voting precincts. *See* Ex. 5101, at 29–62. But if a districting plan is drawn on a bipartisan basis or by a nonpartisan body, a plaintiff will be unable to establish that it was drawn with discriminatory intent, and therefore the plan will pass constitutional muster. *See Whitford*, 218 F.Supp.3d at 908. Likewise, just as compliance with traditional redistricting criteria does not immunize a districting plan from constitutional scrutiny, *see supra* Part III.A.3, failure to comply with redistricting criteria does not necessarily prove the inverse—that a districting plan amounts to an actionable partisan gerrymander. And to the extent Dr. Jackman's threshold fails to flag certain unconstitutional plans, a plaintiff can rely on other types of evidence to prove a plan's discriminatory effects. Additionally, each of these concerns are not present in this case—the Republican-controlled General Assembly intended to dilute the votes of non-Republican voters and the 2016 Plan exhibited an extremely large efficiency gap in the 2016 election—meaning that those concerns, although potentially legitimate in other cases, do not significantly undermine the probative force of Dr. Jackman's efficiency gap conclusions as to the 2016 Plan. *Accord Whitford*, 218 F.Supp.3d at 908.

We also reject Legislative Defendants' assertion that a state redistricting body cannot apply the efficiency gap prospectively. In particular, Dr. Chen used the results from the seven races on which Dr. Hofeller relied and the twenty races included in the Committee's Political Data criterion to predict the efficiency gap for both the 2016 Plan and the 3,000 simulated plans he generated. Ex. 2010, at 32–34. Like Dr. Jackman's *post hoc* analysis, Dr. Chen's analysis revealed that the 2016 Plan's predicted efficiency

gap was an extreme outlier relative to the simulated plans in his sample and significantly higher than the thresholds suggested by Dr. Jackman. *Id.* at 25. Accordingly, just as the General Assembly used the data relied on by Dr. Hofeller and prescribed by the Committee to predict (correctly) that the 2016 Plan would elect ten Republicans and three Democrats, so too could it have used that same data to predict the 2016 Plan's efficiency gap—and that the magnitude of that gap would provide strong evidence of the 2016 Plan's pro-Republican bias. [31]

***54** Finally, we agree with Legislative Defendants that the efficiency gap does not provide redistricting bodies with an incentive to draw districting plans with more competitive districts. But the 2016 Plan, which Legislative Defendants seek to keep in place, also creates uniformly "safe" districts. *See* Ex. 3022. And the Supreme Court has never held that the Constitution entitles voters to competitive districts. Accordingly, regardless of whether the efficiency gap's failure to encourage redistricting bodies to draw districting plans with competitive districts is desirable from a policy perspective, that failure does not render the efficiency gap constitutionally or legally infirm.

ii.

The second measure of partisan asymmetry calculated by Dr. Jackman, partisan bias, measures a districting plan's asymmetry by taking the two parties' statewide vote share in a particular election, and then imposing a uniform swing of the magnitude necessary to make the parties split the statewide vote equally. Trial Tr. II, at 47:7–21; *LULAC*, 548 U.S. at 420, 126 S.Ct. 2594 (explaining that partisan bias is measured by "comparing how both parties would fare hypothetically if they each (in turn) had received a given percentage of the vote" (internal quotation marks and alteration omitted)). After performing the uniform swing, the analyst then calculates the number of seats each party would win. Trial Tr. II, at 47:7–21. A districting plan "is biased in favor of the party that would win more than 50 percent of the seats, if it won 50 percent of the vote and is biased against the ... party that would win less than 50 percent of the seats if it were able to win 50 percent of the vote," Dr. Jackman explained. *Id.* at 46:15–47:4. When partisan bias is close to zero, a districting plan does not favor, invidiously or otherwise, one party or the other. Ex. 4002, at 13–17; Trial Tr. II, at 48:21–50:7. In *LULAC*, a majority of the Court agreed that partisan bias, at a minimum, has "utility in redistricting planning and litigation," even if, by itself, it is "not a reliable measure of unconstitutional partisanship." 548 U.S. at 420, 126 S.Ct. 2594 (opinion of Kennedy, J.); *id.* at 483–84, 126 S.Ct. 2594 (Souter, J. dissenting in part) (joined by Ginsburg, J., noting that "[i]nterest in exploring [partisan bias and other measures of partisan symmetry] is evident" and citing separate opinions of Kennedy, J., Stevens, J., and Breyer, J.).

Dr. Jackman found that the 2016 Plan exhibited a pro-Republican partisan bias of 27 percent. Ex. 4003, at 3–4. He again sought to put that figure in perspective by comparing it to previous North Carolina congressional elections and congressional elections across the country. Dr. Jackman found that the 2016 Plan's partisan bias in the 2016 election was the largest observed in North Carolina since 1972, the first year for which he had data. *Id.* And the 2016 Plan's partisan bias was the *second largest* observed among the 283 state congressional elections [32] in his database, and "roughly three standard deviations from the historical mean." *Id.* at 4. Based on these findings, Dr. Jackman characterized the partisan bias exhibited by the 2016 Plan as "extreme"—"of quite literally historic magnitude, not just relative to North Carolina's history, but in the United States of America." Trial Tr. II, at 80:15, 80:24–81:1.

iii.

***55** Finally, Dr. Jackman estimated the 2016 Plan's mean-median difference in North Carolina's 2016 congressional election. As its name suggests, the mean-median difference is the difference between a party's mean vote share in a particular election and median vote share in that election across all of the districts included in the subject districting plan. Ex. 4003, at 7. In his report, Dr. Jackman explained that the intuition behind the mean-median difference measure "is that when the mean and the median diverge significantly, the distribution of district-level vote shares is skewed in favor of one party and against its opponent—consistent with the classic gerrymandering techniques of 'packing' partisans into a relatively small number of districts and/or 'cracking' partisans among a larger number of districts." *Id.* As with the efficiency gap and partisan bias, the closer the mean-median difference is to zero, the less a plan is biased (invidiously or otherwise) towards one party or another.

Dr. Jackman found that the 2016 Plan exhibited a pro-Republican mean-median difference of 5.1 percent in North Carolina's 2016 congressional election. He explained that the mean-median difference arose from the packing of Democratic voters in the three districts in which Democratic candidates prevailed, and the dispersal of Democratic voters across the remaining districts. Trial Tr. II, at 81:17–21 ("[T]he skew here arises from the fact that there are three districts where Democratic vote share is in the 60s, and then there are ten where it's below 50 percent, where the Democrat lost."). Again seeking to put the 2016 Plan's 5.1 percent figure in historical perspective, Dr. Jackman found that "North Carolina's average mean-median difference from 1972 to 2016 was just 1.0%," Ex. 4003, at 8, and for the other state elections included in his database the average mean-median difference was "roughly ... zero." Trial Tr. II, at 81:22.

* * * * *

We find Dr. Jackman's partisan asymmetry analyses provide strong evidence that the 2016 Plan subordinates the interests of supporters of non-Republican candidates and serves to entrench the Republican Party's control of the state's congressional delegation. In particular, we find it significant that three different measures of partisan asymmetry all point to the same result—that the 2016 Plan poses a significant impediment to supporters of non-Republican candidates translating their votes into seats, and that the magnitude of that impediment is an extreme outlier relative to other congressional districting plans. We also find it significant that Dr. Jackman's analyses demonstrate the durability of the 2016 Plan's pro-Republican bias, both by comparing the 2016 Plan to other plans that were used in multiple elections and by demonstrating that 2016 Plan is likely to retain its pro-Republican bias "under any *likely* electoral scenario." *Whitford*, 218 F.Supp.3d at 899, 903. Given that durability, we find that the 2016 Plan has the effect of entrenching Republican candidates in power, even in the face of significant shifts in voter support in favor of non-Republican candidates, and thereby likely making Republican elected representatives less responsive to the interests of non-Republican members of their constituency.

c.

Next, we find that Dr. Mattingly's and Dr. Chen's simulation analyses not only evidence the General Assembly's discriminatory intent, but also provide evidence of the 2016 Plan's discriminatory effects. As explained above, Dr. Mattingly created an ensemble of 24,518 simulated districting plans that conform to traditional redistricting criteria, and then assessed the electoral outcomes of those plans relative to the 2016 Plan using actual votes cast in North Carolina's 2012 and 2016 congressional elections. *See supra* Part III.A.2.b. When he evaluated the ensemble using actual 2012 votes, Dr. Mattingly found that nearly 80 percent of the simulated plans would have yielded two-to-three fewer seats for Republicans than the 2016 Plan, and more than 99 percent of the plans resulted in at least one less seat for Republicans. Ex. 3040, at 7–10. And using actual 2016 congressional votes, Dr. Mattingly found that more than 70 percent of the simulated plans produced two-to-three fewer seats for Republicans than the 2016 Plan, and more than 99 percent of the plans resulted in at least one less seat for Republicans. *Id.* at 19–22. Accordingly, Dr. Mattingly's analyses indicate that the 2016 Plan had a measurable tangible adverse impact on supporters of non-Republican candidates.

***56** Dr. Chen's simulation analyses likewise indicate that the 2016 Plan had a measurable tangible adverse effect on supporters of non-Republican candidates. Analyzing his first set of 1,000 simulated plans—which sought to conform to the Committee's non-partisan criteria—using elections results reflected in Dr. Hofeller's seven-race formula, Dr. Chen found that 78 percent of the simulated plans would have elected three-to-four fewer Republican candidates, with *all* of the plans electing at least one less Republican candidate. *See* Ex. 2010, at 12–13. And using the Committee's twenty-race criterion, Dr. Chen found that 94.5 percent of the simulated plans would have elected two-to-four fewer Republican candidates, with *all* of the plans electing at least one less Republican candidate. *Id.* at 13. Dr. Chen found similar results when he used the 2,000 simulated plans in his simulated sets that sought to avoid pairing incumbents and match the county splits and incumbent protection of the 2016 Plan. *Id.* at 16, 21. Based on these results, Dr. Chen concluded that the 2016 Plan "creates 3 to 4 more Republican seats than what is generally achievable under a map-drawing process

respecting non-partisan, traditional districting criteria." *Id.* at 2–3.

To assess the 2016 Plan's partisan effects, Dr. Chen also compared the 2016 Plan's efficiency gap with those of his simulated plans. For each of his three sets of 1,000 simulated districting plans, Dr. Chen found that the 2016 Plan yielded a significantly higher pro-Republican efficiency gap than *all* of the simulated plans, regardless of whether he used the results from the seven elections relied on by Dr. Hofeller or the twenty elections prescribed by the Committee. *Id.* at 32–34. Because the 2016 Plan yielded "improbabl[y]" high pro-Republican efficiency gaps, Dr. Chen concluded "with overwhelmingly high statistical certainty that neutral, non-partisan districting criteria, combined with North Carolina's natural political geography, could not have produced a districting plan as electorally skewed as the [2016 Plan]." *Id.* at 25.

Taken together, Dr. Mattingly's and Dr. Chen's analyses —which use multiple methods for generating districting plans and multiple sets of votes—provide additional strong evidence that the 2016 Plan had the effect of discriminating against non-Republican voters. As detailed above, none of Legislative Defendants' objections to Dr. Mattingly's and Dr. Chen's analyses call into question their persuasive force. *See supra* Part III.A.2.b.

d.

Finally, although not essential to our finding that the 2016 Plan had the effect of discriminating against supporters of non-Republican candidates, the results of the two congressional elections conducted under the *2011 Plan*—and empirical analyses of those results—provide further evidence of the *2016 Plan*'s discriminatory effects. As explained previously, *see supra* Part III.A.2.c, because the Adopted Criteria expressly sought to carry forward the 2011 Plan's partisan effects, Ex. 1007, any discriminatory partisan effects attributable to the 2011 Plan are probative of the 2016 Plan's discriminatory effects. That is particularly true given that, according to an analysis by Legislative Defendants' expert Dr. Hood, most of the districts created by the 2016 Plan retained the "core" of their constituency under the 2011 Plan, Ex. 5058, at 23, including the First, Fourth, and Twelfth Districts in which Dr. Hofeller expressly sought to "concentrat[e]" likely Democratic voters, Ex. 2043, at 33–34.

In North Carolina's 2012 election conducted under the 2011 Plan, North Carolina voters statewide cast 50.9 percent of the votes for Democratic congressional candidates, yet Democratic candidates won only 30.8 percent of the state's congressional seats (4 of 13). Ex. 4002, at 62. The 2011 Plan exhibited a 21.4 percent pro-Republican efficiency gap in the 2012 election. *Id.* In 2014, Democratic candidates won 46.2 percent of the statewide vote, and won 23.1 percent of the seats in the state's congressional delegation, producing a pro-Republican efficiency gap of 21.1 percent. *Id.* North Carolina's 2012 and 2014 efficiency gaps produced under the 2011 Plan were the twelfth– and fourteenth-largest by magnitude in Dr. Jackman's 512–election sample. *Id.* at 65. Therefore, as the durability analyses conducted by Dr. Jackman described above would indicate, the magnitude of the 2012 efficiency gap pointed to the large efficiency gap realized in 2014. *See supra* Part II.B.2.b.i.

***57** Noting that the magnitude of North Carolina's efficiency gaps under the 2011 Plan were significantly higher than those exhibited by the 2001 Plan, Dr. Jackman concluded that the 2011 Plan "is the driver of the change, systematically degrading the efficiency with which Democratic votes translate into Democratic seats in North Carolina." Ex. 4002, at 66. Accordingly, because (1) the General Assembly drew the 2016 Plan to perpetuate the partisan effects of the 2011 Plan and (2) evidence reveals that the 2011 Plan was systematically biased to durably burden supporters of non-Republican candidates, we find that the pro-Republican bias of the 2011 Plan provides further evidence of the 2016 Plan's discriminatory effects.

* * * * *

When viewed in totality, we find Plaintiffs' evidence more than sufficient to prove that the 2016 Plan has discriminated, and will continue to discriminate, against voters who support non-Republican candidates. In reaching this conclusion, we find it significant that Plaintiffs' evidence proves the 2016 Plan's discriminatory effects in a variety of different ways. Plaintiffs' direct evidence based on the actual results of an election conducted under the 2016 Plan confirmed that the discriminatory effects intended by the 2016 Plan's architects and predicted by Dr. Mattingly's analyses—the election of 10 Republicans by margins that suggest they will retain their seats throughout the life of the plan—in fact occurred. That five different types of statistical

analyses performed by three different experts all reached the same conclusion gives us further confidence that 2016 Plan produces discernible discriminatory effects. And although some of those analyses considered "unfair results that would occur in a hypothetical state of affairs," *LULAC*, 548 U.S. at 420, 126 S.Ct. 2594 (opinion of Kennedy, J.), others like the efficiency gap and the mean-median difference did not. Given that all of this evidence "point[s] in the same direction"—and Legislative Defendants failed to provide any evidence to the contrary—Plaintiffs have provided "strong proof" of the 2016 Plan's discriminatory effects. *Sylvester*, 453 F.3d at 903.

C.

[35] We now must determine whether the 2016 Plan's discriminatory effects are justified by a legitimate state districting interest or neutral explanation. *See Vieth*, 541 U.S. at 307, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment) (noting that "[a] determination that a gerrymander violates the law" must "rest ... on a conclusion that [political] classifications ... were applied in ... a way unrelated to any legitimate legislative objective"); *Bandemer*, 478 U.S. at 141, 106 S.Ct. 2797 ("If there were a discriminatory effect and a discriminatory intent, then the legislation would be examined for valid underpinnings."). As a general matter, once a plaintiff establishes a prima facie case that a redistricting plan violates the Equal Protection Clause, the burden shifts to the governmental defendant to prove that a legitimate state interest or other neutral factor justified such discrimination. *See, e.g.*, *Cooper*, 137 S.Ct. at 1464 (racial gerrymandering); *Brown*, 462 U.S. at 842–43, 103 S.Ct. 2690 (one-person, one-vote). Plaintiffs contend—and Legislative Defendants do not dispute—that the same burden-shifting approach applies in partisan gerrymandering cases. [33] Accordingly, we must determine whether Legislative Defendants have proven that the 2016 Plan's discriminatory effects are attributable to a legitimate state interest or other neutral explanation.

1.

***58** Legislative Defendants first argue that Democratic voters tend to congregate in North Carolina's urban centers—*i.e.*, that North Carolina's political geography exhibits "natural packing"—and therefore the 2016 Plan's pro-Republican partisan bias is attributable to such natural packing, rather than invidious partisan discrimination. *See* Ex. 5058, at 10–13; *Vieth*, 541 U.S. at 289–90, 124 S.Ct. 1769 (plurality op.) (describing " 'natural' packing"). To support their natural packing argument, Legislative Defendants rely on a shaded map prepared by Dr. Hood reflecting the partisan makeup of North Carolina's VTDs. Ex. 5058, at 9–10. According to Dr. Hood, that map "visual[ly]" demonstrates that "Democrats appear to be located in urban areas (e.g. Charlotte, Asheville, Winston–Salem, Greensboro, Durham, and Raleigh) and within the *blackbelt* [34] area of the state that runs through the coastal plain subregion," whereas "Republican partisans are much more geographically dispersed, producing a larger footprint within the state." *Id.* at 9–10 (footnote text altered). We agree with Legislative Defendants that supporters of Democratic candidates often cluster in North Carolina's urban areas, but we find that this clustering does not explain the 2016 Plan's pro-Republican discriminatory effects, and for several reasons.

First, Dr. Hood conceded on cross-examination that, in drawing the 2016 Plan, the General Assembly repeatedly divided Democratic clusters. For example, Dr. Hood conceded that the 2016 Plan "cracked" the naturally occurring Democratic cluster in the City of Asheville and Buncombe County into two districts that he classified as "safe" Republican districts. Trial Tr. IV, at 40:1–43:4. Dr. Hood further conceded that had the General Assembly kept that naturally occurring Democratic cluster whole, it would have been more likely that voters in the cluster would have elected a Democratic candidate. *Id.* at 42:23–43:4. Dr. Hood similarly conceded that the 2016 Plan "cracked" several other naturally occurring Democratic clusters and, by "submerg[ing]" likely Democratic voters in pro-Republican districts, made it easier for Republican candidates to prevail in more districts. *Id.* at 43:5–50:25. Accordingly, testimony by Legislative Defendants' expert belies any argument that natural packing explains the 2016 Plan's discriminatory partisan effect.

Second, Dr. Mattingly and Dr. Chen's simulation analyses, both of which account for the state's political geography, found that "natural packing" of Democratic voters did not explain the 2016 Plan's partisan effects. In particular, based on his ensemble of 24,518 simulated congressional districting plans—all of which conformed to traditional redistricting criteria such as population

equality, contiguity, keeping political subdivisions and precincts whole, compactness, and complying with the Voting Rights Act—Dr. Mattingly concluded that "the background structure in the geopolitical makeup of North Carolina, ... its geography, where its people live, where its voters in each party are distributed, and whether the African–American population is, and what that necessitates relative to the Voting Rights Act" did not explain the 2016 Plan's partisan bias. Trial Tr. I, at 91:20–92:19. Dr. Chen's analysis of his simulated districting plans—which conformed to the nonpartisan criteria adopted by the Committee—reached the same conclusion: the "political geography of North Carolina voters" does not explain the 2016 Plan's pro-Republican bias. *Id.* at 212:14–214:2.

Legislative Defendants have not provided *any* persuasive basis for calling into question Dr. Mattingly's and Dr. Chen's methods, findings, and conclusions. *See supra* Part II.A.2.b. And other than Dr. Hood's "visual" analysis, Legislative Defendants have not provided any contrary empirical analysis showing that the state's political geography does, in fact, explain the 2016 Plan's discriminatory effects. *See Whitford*, 218 F.Supp.3d at 914–15 (concluding that Wisconsin's political geography did not explain legislative districting plan's partisan bias when the defendant's natural packing argument was "based largely on ... shaded maps rather than quantitative analysis"). Accordingly, we find that North Carolina's political geography does not explain the 2016 Plan's discriminatory effects on supporters of non-Republican candidates.

2.

***59** Next, Legislative Defendants suggest that the 2016 Plan's discriminatory effects are attributable to the General Assembly's legitimate interest in protecting incumbents elected under the 2011 Plan and the electoral benefits attributable to incumbency. Legislative Defendants are correct that state redistricting bodies have a legitimate interest, at least outside the remedial context,[35] in drawing districts so as to avoid pairing incumbents in a single district. *See Karcher*, 462 U.S. at 740, 103 S.Ct. 2653. But we find that the General Assembly's efforts to protect incumbents do not explain the 2016 Plan's discriminatory partisan effects.

In particular, Dr. Chen's simulation analyses demonstrate that the General Assembly could achieve its interest in avoiding the pairing of incumbents without drawing a plan exhibiting the discriminatory effects of the 2016 Plan. Ex. 2010, at 15–19. Indeed, Dr. Chen's simulated plans advanced the Committee's goal of avoiding pairing incumbents more effectively than the 2016 Plan: unlike the 2016 Plan, which paired two of the state's thirteen incumbents, Dr. Chen drew 1,000 plans that did not pair *any* incumbents. *Id.* at 3, 15–19 ("These simulation results clearly reject any notion that an effort to protect incumbents might have warranted the extreme partisan bias observed in the [2016 Plan].").

***60** Additionally, to ensure that the election data upon which he relied—the *same* data relied upon by Dr. Hofeller and prescribed by the Committee's Political Data criterion—adequately accounted for the benefits of incumbency, Dr. Chen performed a sensitivity analysis that accounted for the electoral advantages associated with incumbency. *Id.* at 26–31. Although that sensitivity analysis revealed, as expected, that incumbents enjoy electoral advantages, *id.* at 27 (finding that North Carolina congressional incumbents receive, on average, approximately 3 percent greater electoral support than nonincumbents), Dr. Chen found that the revealed electoral advantage associated with incumbency did not explain the 2016 Plan's pro-Republican bias, *id.* at 28–30, 32–37.

Dr. Chen's finding that incumbency does not explain the 2016 Plan's partisan bias is unsurprising given that the 2016 Plan sought to protect the incumbents elected under the 2011 Plan. As explained above, the General Assembly expressly drew the 2011 Plan "to minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate." Hofeller Dep. 127:19–22; *see also supra* Part III.A.2–3. And the 2011 Plan had the effect of discriminating against supporters of non-Republican candidates and entrenching Republican control of the state's congressional delegation. Accordingly, the General Assembly's effort to protect incumbents elected under the 2011 Plan when it drew the 2016 Plan served to perpetuate the discriminatory partisan effects of the 2011 Plan.

Legislative Defendants nevertheless argue that Republican candidates' success in the 2016 election under the 2016 Plan was attributable to advantages associated with incumbency, including that the Republican

incumbents attracted less experienced opponents and raised significantly more money than their opponents. Ex. 5058, at 6–7; Trial Tr. IV, at 51:1–53:12. But Dr. Hood conceded on cross-examination that the likelihood an incumbent will prevail in a redrawn district impacts the incumbent's ability to raise money and whether he draws a strong opponent. Trial Tr. IV, at 54:23–55:12. To that end, Dr. Hood further conceded that the Republican incumbents may have attracted weak opponents and raised substantially more money because the General Assembly drew the Republican incumbents districts in which they were likely to prevail—a possibility that Dr. Hood did not consider, much less evaluate. *Id.* at 54:9–59:18.

Given that Legislative Defendants' expert acknowledged that the 2016 Plan's discriminatory lines may have caused Republican incumbents' observed advantages, and that Legislative Defendants failed to offer any analyses rebutting Dr. Chen's rigorous quantitative analysis showing that the General Assembly's goal of protecting incumbents did not explain the 2016 Plan's pro-Republican bias, we find the General Assembly's interest in protecting incumbents and the electoral advantages associated with incumbency do not explain the 2016 Plan's discriminatory partisan effect.

* * * * *

In sum, we find that the General Assembly drew and enacted the 2016 Plan with intent to subordinate the interests of non-Republican voters and entrench Republican control of North Carolina's congressional delegation. We further find that a variety of evidence demonstrates that the 2016 Plan achieved the General Assembly's discriminatory partisan objective. And we find that neither North Carolina's political geography nor the General Assembly's interest in protecting incumbents explains the 2016 Plan's discriminatory effects. Accordingly, we conclude that the 2016 Plan constitutes an unconstitutional partisan gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment.

IV.

***61** **[36]** **[37]** Next, we consider Plaintiffs' claims under the First Amendment. The First Amendment, through the Due Process Clause of the Fourteenth Amendment, prohibits states from making any law "abridging the freedom of speech." U.S. Const. amend. I. Partisan gerrymandering—again, "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power," *Ariz. State Leg.*, 135 S.Ct. at 2658—implicates First Amendment rights because "political belief and association constitute the core of those activities protected by the First Amendment," *Elrod v. Burns*, 427 U.S. 347, 356, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976). The First Amendment "has its fullest and most urgent application to speech uttered during a campaign for political office." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339–40, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010) (internal quotation marks omitted). To that end, the First Amendment protects "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, *regardless of their political persuasion*, to cast their votes effectively." *Williams*, 393 U.S. at 30–31, 89 S.Ct. 5 (emphasis added).

A.

[38] **[39]** **[40]** **[41]** Several lines of precedent bear on the application of the First Amendment to partisan gerrymanders. To begin, by favoring one set of political beliefs over another, partisan gerrymanders implicate the First Amendment prohibition on "viewpoint discrimination." *See Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995); *Vieth*, 541 U.S. at 314, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment) ("First Amendment concerns arise where a State enacts 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*." (emphasis added)). The First Amendment prohibits the government from favoring or disfavoring particular viewpoints, and, therefore, "[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger*, 515 U.S. at 829, 115 S.Ct. 2510. "At its most basic, the test for viewpoint discrimination is whether—within the relevant subject category—the government has singled out a subset of messages for disfavor based on the views expressed." *Matal v. Tam*, —— U.S. ——, 137 S.Ct. 1744, 1766, 198 L.Ed.2d 366 (2017)

(Kennedy, J., concurring in part and concurring in the judgment). Viewpoint discrimination is "presumptively unconstitutional," *Rosenberger*, 515 U.S. at 830, 115 S.Ct. 2510 (internal quotation marks omitted), and therefore subject to "strict scrutiny," *McCullen v. Coakley*, —— U.S. ——, 134 S.Ct. 2518, 2530, 189 L.Ed.2d 502 (2014) (explaining that a governmental action amounting to viewpoint discrimination survives strict scrutiny only if the action is "the least restrictive means of achieving a compelling state interest").

[42] **[43]** Relatedly, by seeking to dilute the electoral speech of supporters of disfavored parties or candidates, partisan gerrymandering runs afoul of the First Amendment's prohibition on laws that disfavor a particular group or class of speakers. *Citizens United*, 558 U.S. at 340, 130 S.Ct. 876 (explaining that "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content"). The First Amendment prohibits such laws because "[b]y taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice." *Id.* at 340–41, 130 S.Ct. 876. In the context of political speech, in particular, the Supreme Court repeatedly has applied the First Amendment's prohibition on "restrictions on certain disfavored speakers" to strike down electoral laws that disfavor a particular group of speakers. *Id.* at 341, 130 S.Ct. 876; *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 784, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). And when, as is the case with a partisan gerrymander, a restriction on one group of speakers "suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended." *Belotti*, 435 U.S. at 785–86, 98 S.Ct. 1407 (footnote omitted). Like viewpoint discrimination, governmental actions that discriminate against a particular group or class of speakers are subject to "strict scrutiny." *See Citizens United*, 558 U.S. at 340, 130 S.Ct. 876.

***62** **[44]** Third, by disfavoring a group of voters based on their prior votes and political association, partisan gerrymandering implicates the First Amendment's prohibition on burdening or penalizing individuals for engaging in protected speech. *Vieth*, 541 U.S. at 314, 124 S.Ct. 1769 (2004) (Kennedy, J., concurring in the judgment) (explaining partisan gerrymandering violates "the First Amendment interest of not burdening or penalizing citizens because of their participation in the electoral process, their voting history, their association with a political party, or their expression of political views"). The Supreme Court has explained that the government cannot "penalize[ ]" a person for engaging in "constitutionally protected speech or associations" because such indirect regulation of speech would "allow the government to produce a result which it could not command directly." *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972) (internal quotation marks and alterations omitted). The Supreme Court's First Amendment retaliation jurisprudence represents a specific application of the general principle that even when the law affords the government the authority to make discretionary decisions —like firing or promoting an employee or allowing public use of a governmental facility—the government may not exercise such discretion "in a narrowly partisan or political manner." *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 870–71, 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982) (plurality opinion). For example, although the government retains discretion to curate public school libraries, "[i]f a Democratic school board, motivated by party affiliation, ordered the removal of all books written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students denied access to those books." *Id.*; *see also id.* at 907, 102 S.Ct. 2799 (Rehnquist, J., dissenting) ("I can cheerfully concede all of this.").

Courts have distilled a three-prong test from the Supreme Court's First Amendment retaliation jurisprudence, examining whether (1) the plaintiff's "speech was protected;" (2) "the defendant's ... retaliatory action adversely affected the plaintiff's constitutionally protected speech;" and (3) "a causal relationship exists between [the plaintiff's] speech and the defendant's retaliatory action." *See, e.g.*, *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 686 (4th Cir. 2000). Examining these considerations, the Supreme Court repeatedly has struck down as violative of the First Amendment government actions that burden or penalize an individual or group for engaging in political speech. *See, e.g.*, *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 65, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990) (concluding that First Amendment prohibits government employers from making "promotion, transfer, recall, and hiring decisions involving low-level public employees ... based on party affiliation and support"); *Elrod*, 427 U.S. at 373,

96 S.Ct. 2673 (holding that First Amendment prohibits government officials from discharging or threatening to discharge lower-level public employees based on their political affiliation).

[45] **[46]** **[47]** Finally, partisan gerrymandering implicates First Amendment precedent dealing with electoral regulations that have the potential to burden political speech or association. *See, e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983). The First Amendment demands judicial scrutiny of state election regulations because regulations that "govern[ ] the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affect[ ] —at least to some degree—the individual's right to vote and his right to associate with others for political ends." *Anderson*, 460 U.S. at 788, 103 S.Ct. 1564. Because states' "important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions," *id.*, the Supreme Court applies "sliding-scale" scrutiny to state election regulations, *see Burdick*, 504 U.S. at 433–34, 112 S.Ct. 2059. In particular, "[a] court considering a challenge to a state election law must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.' " *Id.* at 434, 112 S.Ct. 2059 (quoting *Anderson*, 460 U.S. at 789, 103 S.Ct. 1564, *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 213–14, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986)). Under this test, "[e]lection regulations that impose a severe burden on associational rights are subject to strict scrutiny." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008). By contrast, "[i]f a statute imposes only modest burdens ... then 'the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.' " *Id.* at 452, 128 S.Ct. 1184 (quoting *Anderson*, 460 U.S. at 788, 103 S.Ct. 1564).

***63** **[48]** Applying that test, the Court has "repeatedly upheld reasonable, *politically neutral* regulations that have the effect of channeling expressive activity at the polls." *Id.* at 438, 112 S.Ct. 2059 (emphasis added). By contrast, the Supreme Court has repeatedly struck down as violative of the First Amendment facially neutral electoral regulations that had the effect of burdening particular parties, candidates, or groups of voters. *See, e.g.*, *Tashjian*, 479 U.S. at 225, 107 S.Ct. 544 (concluding that state's enforcement of statute requiring closed primaries, against the will of the Republican party, violated First Amendment); *Anderson*, 460 U.S. at 806, 103 S.Ct. 1564 (striking down state candidate filing deadline because it posed unjustified burden on third-party candidates and voters who supported such candidates, where the "interests of the voters who chose to associate together" for political ends constituted the Court's "primary concern"). These cases reflect the governing principle that "in exercising their powers over elections and in setting qualifications for voters, the States may not infringe upon basic constitutional protections," including enacting "election laws [that] so impinge upon freedom of association as to run afoul of the First and Fourteenth Amendments." *Kusper v. Pontikes*, 414 U.S. 51, 56–57, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973).

Against these many, multifaceted lines of precedent, the First Amendment's applicability to partisan gerrymandering is manifest. How can the First Amendment prohibit the government from disfavoring certain viewpoints, yet allow a legislature to enact a districting plan that disfavors supporters of a particular set of political beliefs? How can the First Amendment bar the government from disfavoring a class of speakers, but allow a districting plan to disfavor a class of voters? How can the First Amendment protect government employees' political speech rights, but stand idle when the government infringes on voters' political speech rights? And how can the First Amendment ensure that candidates ascribing to all manner of political beliefs have a reasonable opportunity to appear on the ballot, and yet allow a state electoral system to favor one set of political beliefs over others? We conclude that the First Amendment does not draw such fine lines.

[49] The 2016 Plan, in particular, implicates all four of these lines of precedent. The 2016 Plan discriminates against a particular viewpoint: voters who oppose the Republican platform and Republican candidates. The 2016 Plan also discriminates against a particular group of speakers: non-Republican candidates and voters who support non-Republican candidates. The General Assembly's use of Political Data—individuals' votes in

previous elections—to draw district lines to dilute the votes of individuals likely to support non-Republican candidates imposes burdens on such individuals based on their past political speech and association. And the 2016 Plan's partisan favoritism excludes it from the class of "reasonable, politically neutral" electoral regulations that pass First Amendment muster. *Burdick*, 504 U.S. at 438, 112 S.Ct. 2059.

B.

Notwithstanding the evident applicability of the First Amendment to partisan gerrymandering, and the 2016 Plan in particular, neither the Supreme Court nor lower courts have settled on a framework for determining whether a partisan gerrymander violates the First Amendment. League Plaintiffs, in accordance with the approach taken in *Whitford*, assert that the three-prong framework governing partisan gerrymandering claims under the Equal Protection Clause also applies to partisan gerrymandering claims under the First Amendment. This requires a plaintiff to demonstrate (1) discriminatory intent, (2) discriminatory effects, and (3) a lack of justification for the discriminatory effects. League Br. 3; *Whitford*, 218 F.Supp.3d at 884. That inquiry mirrors the considerations the Supreme Court evaluates in First Amendment retaliation cases and First Amendment challenges to election regulations, *see supra* Part IV.A; *infra* Part IV.C, albeit using somewhat different nomenclature. Legislative Defendants agree that to the extent partisan gerrymandering is actionable under the First Amendment—and we conclude that it is, *see supra* Parts II.B, IV.A [36] —the governing legal framework is no "different from any test which might apply under the Fourteenth Amendment." Leg. Defs.' FOF 105–06 (" '[T]he [F]irst amendment, like the [T]hirteenth, offers no protection of voting rights beyond that afforded by the [F]ourteenth and [F]ifteenth Amendments.' " (quoting *Washington v. Finlay*, 664 F.2d 913, 927–28 (4th Cir. 1981))).

***64** Common Cause Plaintiffs, by contrast, assert that once a plaintiff proves that a redistricting body intended for a districting plan to discriminate against voters likely to support a disfavored candidate or party—and thereby intended to engage in discrimination against a particular viewpoint and group of speakers—a court must subject the plan to strict scrutiny, upholding the plan " 'only if [Defendants] prove[ ] that [it is] narrowly tailored to serve compelling state interests." Common Cause Br. 7–8 (quoting *Reed v. Town of Gilbert*, —— U.S. ——, 135 S.Ct. 2218, 2226, 192 L.Ed.2d 236 (2015)). Accordingly, unlike League Plaintiffs, Common Cause Plaintiffs take the position that once a plaintiff demonstrates that a districting plan is motivated by invidious partisan intent, the First Amendment does not require a plaintiff to demonstrate that a plan has concrete discriminatory effects.

We agree with Common Cause Plaintiffs that the Supreme Court's demonstrated dim view of viewpoint discrimination, laws that discriminate against a class of speakers, and laws that impose severe burdens on associational rights provides strong theoretical support for their position that invidious partisan discrimination, even absent a showing of concrete discriminatory effects, "is itself an injury to the First Amendment rights of the intended targets or victims." Common Cause Br. 9. To that end, the Supreme Court repeatedly has struck down election laws and regulations that discriminate against a particular viewpoint or group of speakers, even in the absence of evidence that the law or regulation had, or would have, a concrete effect on the outcome of an election. *See, e.g.*, *Citizens United*, 558 U.S. at 365–66, 130 S.Ct. 876 (striking down statute placing certain restrictions on political advocacy by corporations); *Fed. Election Comm'n v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 481, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (opinion of Roberts, C.J.) (same); *id.* at 504, 127 S.Ct. 2652 (Scalia, J., concurring in the judgment) (same). Likewise, courts reviewing election regulations under the *Anderson*/*Burdick* framework apply strict scrutiny to election regulations that are not "even-handed" or "politically neutral." *Dudum v. Arntz*, 640 F.3d 1098, 1106 (9th Cir. 2011); *see also Clingman v. Beaver*, 544 U.S. 581, 603–04, 125 S.Ct. 2029, 161 L.Ed.2d 920 (2005) (O'Connor, J. concurring in part) (concluding that burden imposed by electoral regulation was not "severe," and thus not subject to strict scrutiny, because it imposed "only a modest and politically neutral burden on associational rights").

Nevertheless, Supreme Court precedent appears to bar a plaintiff from successfully challenging a partisan gerrymander solely based on evidence that a redistricting body enacted a districting plan with discriminatory partisan intent. *See LULAC*, 548 U.S. at 418, 126 S.Ct. 2594 (opinion of Kennedy, J.) ("[A] successful

claim attempting to identify unconstitutional acts of partisan gerrymandering must do what appellants' sole-motivation theory explicitly disavows: show a burden, as measured by a reliable standard, on the complainants' representational rights. For this reason, a majority of the Court rejected a test proposed in *Vieth* that is markedly similar to the one appellants present today."); *id.* at 511–12, 126 S.Ct. 2594 (Scalia, J., concurring in part and dissenting in part). To that end, the one lower court to put forward a unique framework for adjudicating partisan gerrymandering claims under the First Amendment since the Supreme Court decided *LULAC* required that a partisan gerrymandering plaintiff prove that he experienced a "demonstrable and concrete adverse effect" on his First Amendment rights. *Shapiro*, 203 F.Supp.3d at 598.

[50] In light of this precedent, we assume that the Supreme Court would review First Amendment partisan gerrymandering claims in accordance with the intermediate scrutiny applied in retaliation cases and challenges to election regulations that do not impose a "severe" burden on voting rights.[37] Drawing on that precedent, we derive a three-prong test requiring Plaintiffs to prove: (1) that the challenged districting plan was intended to favor or disfavor individuals or entities that support a particular candidate or political party, (2) that the districting plan burdened the political speech or associational rights of such individuals or entities, and (3) that a causal relationship existed between the governmental actor's discriminatory motivation and the First Amendment burdens imposed by the districting plan.

1.

***65** **[51]** The intent prong principally derives from the causation component in First Amendment retaliation cases. In such cases, a "plaintiff must show a causal connection between a defendant's *retaliatory animus* and subsequent injury in any sort of retaliation action." *Hartman v. Moore*, 547 U.S. 250, 259, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006) (emphasis added). Put differently, a plaintiff must show that her protected First Amendment activities were a "motivating factor" behind the challenged retaliatory action. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977). The motivating-factor requirement in First Amendment retaliation claims parallels the intent requirement in Equal Protection Claims. *Id.* at 287, 97 S.Ct. 568 n.2 (citing *Arlington Heights*, 429 U.S. at 270–71, 97 S.Ct. 555). Relying on this precedent, lower courts have concluded that the motivating-factor requirement renders proof of a governmental actor's intent to burden speech or associational rights an essential element of First Amendment retaliation claims. *See, e.g.*, *Greenwich Citizens Comm., Inc. v. Ctys. Of Warren & Washington Indus. Dev. Agency*, 77 F.3d 26, 32 (2d Cir. 1996) ("[R]etaliatory intent is required for a retaliatory First Amendment claim."); *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 14 F.3d 457, 464 (9th Cir. 1994) ("The defendant's intent is an element of the [retaliation] claim." (emphasis removed)); *Shapiro*, 203 F.Supp.3d at 597.

[52] Applying the guidelines for assessing discriminatory intent in *Arlington Heights*, we previously found that Plaintiffs adduced more-than-sufficient evidence to prove that, in enacting the 2016 Plan, the General Assembly intended to "subordinate" the interests of entities and voters who supported, or were likely to support, non-Republican candidates. *See supra* Part III.A. Given that the *Arlington Heights* intent inquiry parallels the intent inquiry in First Amendment retaliation claims, *see Mt. Healthy*, 429 U.S. at 287 n.2, 97 S.Ct. 568, we likewise find that Plaintiffs satisfied their burden to demonstrate that the General Assembly intended to burden the speech and associational rights of such entities and voters.

2.

[53] Next, we must determine whether the 2016 Plan in fact burdened First Amendment rights. The requirement that a plaintiff demonstrate that a partisan gerrymander burdens political speech or associational rights derives from both retaliation and election regulation cases. In the context of retaliation claims, even when, as here, a challenged governmental action does not flatly prohibit protected speech or association, the action nonetheless burdens First Amendment rights if it "has a chilling effect or an adverse impact" on speech or associational rights. *The Balt. Sun Co. v. Ehrlich*, 437 F.3d 410, 416 (4th Cir. 2005). To constitute an actionable First Amendment burden, the chilling effect or adverse impact must be more than *de minimis*. *See, e.g.*, *McKee v. Hart*, 436 F.3d 165, 170 (3d Cir. 2006); *ACLU of Md., Inc. v. Wicomico Cty.*, 999 F.2d 780, 786 n.6 (4th Cir. 1993). Likewise, the *Anderson*/*Burdick* framework

applied in election regulation cases requires a plaintiff to establish that a challenged regulation imposed a "burden" on political speech or associational rights. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 189–90, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008) (opinion of Stevens, J.). The Court has refused to impose "any litmus test for measuring the severity of a burden that a state law imposes on a political party, an individual voter, or a discrete class of voters," instead requiring that "[h]owever slight [a] burden may appear ... it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation." *Id.* at 191, 128 S.Ct. 1610 (internal quotation marks omitted).

Legislative Defendants argue that partisan gerrymandering does not "burden" First Amendment rights because it does not "prohibit" supporters of a disfavored party or candidate from speaking nor does it "chill" speech or "deter" such supporters "from engaging in political speech or association." Leg. Defs.' FOF 139. Put differently, the 2016 Plan does not "chill" First Amendment activities because "Plaintiffs are every bit as free under [the 2016 Plan] to run for office, express their political views, endorse and campaign for their favorite candidates, vote, or otherwise influence the political process through their expression." *Kidd v. Cox*, No. 1:06-cv-0997, 2006 WL 1341302, at *12 (N.D. Ga. 2006).

***66** **[54]** **[55]** A governmental action "chills" speech if it is "likely [to] deter a person of ordinary firmness from the exercise of First Amendment rights." *Benham v. City of Charlotte*, 635 F.3d 129, 135 (4th Cir. 2011) (alteration in original) (internal quotation marks omitted). "Any chilling effect must be objectively reasonable. Nevertheless, a claimant need not show [he] ceased those activities altogether to demonstrate an injury in fact." *Id.* (alterations and internal citation omitted).

[56] Under that standard, the record reveals that the 2016 Plan has had a chilling effect on reasonable North Carolinians' First Amendment activities. Multiple Plaintiffs testified that in "the most recent election, a lot of people did not come out to vote"—despite concerted get-out-the-vote efforts—"[b]ecause they felt their vote didn't count." Evans Dep. 16:4–9; *accord, e.g.*, Peck Dep. 27:20–24 ("I can't tell you how many people told me this election, Republicans as well as Democrats, 'This system is rigged. My vote doesn't count.' It was really hard to try to galvanize people to participate."). Likewise, in the 2016 election under the 2016 Plan, many organizations' "biggest struggle was to get people to vote." Peck Dep. 40:5–6. Voters and advocacy organizations elected not to participate in congressional races because they believed they could not "have a democratic—small "D"—democratic impact. It doesn't really matter for those races because of the gerrymandering because they're not competitive." Peck Dep. 30:20–24.

Additionally the League had difficulty "inform[ing] ... [and] engag[ing] voters in the process of voting and civic participation in their government." Klenz Dep. 59:16–17; *see id.* 44:15–25 (explaining that the League of Women Voters engages in "voter registration" and "Get Out The Vote" efforts). For example, the League testified that it had difficulty finding ways for their members to interact with "candidate[s] that [were] expected to win and projected to win," because those candidates were often not "motivated" to participate "in voter forums, debates, [or] voter guides, because the outcome is so skewed in favor or in disfavor of one or the other." *Id.* at 59:16–17, 60:6–10. Individual Plaintiffs also testified to the adverse impact of the districting plan on their ability to interact with and influence their representatives. *See, e.g.*, Brewer Dep. 24:8–25:6 (explaining that in "non-competitive districts" representatives from "both parties are not required to reach out to voters in the other party or even truly independent voters," and therefore such voters tend "to be poorly represented because their views and their potential votes are not fairly considered").

The 2016 Plan also chilled the speech and associational rights of voters affiliated with the North Carolina Democratic Party. Because Democratic candidates were unlikely to prevail in districts drawn by the General Assembly to elect Republicans, it "ma[d]e[ ] it extremely difficult" for the North Carolina Democratic Party "to raise funds and have resources and get the attention of the national congressional campaign committees and other lawful potential funders for congressional races in those districts." Goodwin Dep. 98:1–5. For the same reasons, the party had difficult recruiting strong candidates. *Id.* at 41:20–42:20; 60:23–61:16. Individual Plaintiffs testified to similar difficulty raising money, attracting candidates, and mobilizing voters to support the political causes and issues such Plaintiffs sought to advance. *E.g.*, Quinn Dep. 39:1–3 ("[Extreme gerrymandering] makes it harder for me [as a local organizer] to raise money; it makes it harder for me to recruit candidates; makes it harder

to just mobilize a campaign."); Palmer Dep. 27:19–23 (recounting that citizens in one district asked for "help [to] recruit a candidate for [the citizens'] county [because] ... no Democrats [we]re going to run [t]here" given the significant obstacle to success posed by the partisan gerrymander); Morgan Dep. 23:21–25 ("[P]eople ... say no sense in us giving money to that candidate because [he or she] is unlikely to prevail, notwithstanding the merit of their positions.").

***67** Expert testimony confirmed the reasonableness of North Carolinians' feelings that their votes "did not count" and the corresponding chilling effects on speech and associational activities. For example, the Republican candidate's vote share (56.10%) and margin of victory (12.20%) in the *least* Republican district which elected a Republican candidate under the 2016 Plan exceeded the thresholds at which political science experts, including Legislative Defendants' expert Dr. Hood, consider a district to be "safe"—*i.e.*, highly unlikely to change parties in subsequent elections. Ex. 5058, at 25, Trial Tr. IV, at 29:16–22, 86:21–88:5. Likewise, Dr. Jackman testified that it would require a swing of votes in Democratic candidates' favor of "historic magnitude" to strip the 2016 Plan of its pro-Republican bias. Trial Tr. II, at 54:24–55:9. And Dr. Hood testified that when a district's lines are drawn so that a particular party's candidate is likely to prevail, the opposing party will have difficulty attracting a strong candidate and raising money to support that candidate. Trial Tr. IV, at 54:9–59:18.

All of these chilling effects on speech and association—difficulty convincing voters to participate in the political process and vote, attracting strong candidates, raising money to support such candidates, and influencing elected officials—represent cognizable, and recognized, burdens on First Amendment rights. *See, e.g.*, *Anderson*, 460 U.S. at 792, 103 S.Ct. 1564 (finding that plaintiff was injured by election law that made "[v]olunteers ... more difficult to recruit and retain, media publicity and campaign contributions ... more difficult to secure, and voters ... less interested in the campaign"); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 587 (6th Cir. 2006) (recognizing that electoral restrictions that "affect a political party's ability to perform its primary functions—organizing and developing, recruiting supporters, choosing a candidate, and voting for that candidate in a general election"—can constitute "severe" First Amendment burdens); *Benisek v. Lamone*, 266 F.Supp.3d 799, 834 (D. Md. 2017) (Niemeyer, J., dissenting) ("[T]he purposeful reduction of one party's effectiveness may well chill the protected expression of that party's voters, even if no individual plaintiff establishes, as a factual matter, that *he* was so chilled."), *appeal docketed* —— U.S. ——, 138 S.Ct. 543, —— L.Ed.2d —— (2017). Importantly, that partisan gerrymanders do not bar citizens from voting or expressing their political views does not render these First Amendment burdens any less significant. *Cal. Democratic Party v. Jones*, 530 U.S. 567, 581, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000) ("We have consistently refused to overlook an unconstitutional restriction upon some First Amendment activity simply because it leaves other First Amendment activity unimpaired.").

Additionally, Legislative Defendants' myopic focus on whether a partisan gerrymander, and the 2016 Plan in particular, "chilled" or "deterred" protected speech or association ignores that a retaliatory governmental action also poses a constitutionally cognizable "burden" when it "adversely affects[s]" the speaker and the candidate or political groups with whom he seeks to associate. *Rutan*, 497 U.S. at 73, 110 S.Ct. 2729; *Suarez*, 202 F.3d at 686. As detailed above, myriad evidence establishes that the 2016 Plan makes it easier for supporters of Republican candidates to translate their votes into seats in the state's congressional delegation and diminishes the need for Republican representatives to respond to the interests of voters who support non-Republican candidates. *See supra* Part III.B. Accordingly, even if the speech of voters who support non-Republican candidates was not *in fact* chilled—if, for example, they had all continued to vote for, speak on behalf of, donate money to, and campaign for such candidates—the 2016 Plan nonetheless "adversely affected" such voters' First Amendment rights by diluting the electoral power of their votes. *Shapiro*, 203 F.Supp.3d at 597–98 (recognizing that "dilution" of disfavored party's electoral power constitutes adverse effect cognizable under the First Amendment).

***68** **[57]** The principle that vote dilution—the intentional diminishment of the electoral power of supporters of a disfavored party and enhancement of the electoral power of supporters of a favored party—constitutes an actionable adverse effect on political speech and associational rights derives from bedrock First Amendment principles. "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others *is wholly*

foreign to the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 48–49, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (emphasis added), *superseded by statute on other grounds as stated in McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003). To that end, the government may not cap the amount of independent expenditures individuals, entities, and political parties may make on behalf of a "clearly identified candidate." *Id.* at 45, 96 S.Ct. 612.

Likewise, it is beyond cavil that the First Amendment would forbid the government from making large public spaces available for speakers advocating for a favored political party, while allowing supporters of disfavored speakers only to speak in smaller public venues, simply because government officials preferred the message of the favored party's speakers. Nor is there any question that the government would violate the First Amendment if it allowed supporters or candidates of one party to speak with a bullhorn but barred candidates from other parties from doing the same. Although the supporters of the disfavored candidate or party remain free to speak as much as they wish—*i.e.* their speech is not chilled—the government nonetheless violates the First Amendment by "enhanc[ing] the relative voice" of the favored party. *Buckley*, 424 U.S. at 48–49, 96 S.Ct. 612.

[58] **[59]** Just as the government may not altruistically "equaliz[e] the relative ability of individuals and groups to influence the outcome of elections," *Citizens United*, 558 U.S. at 350, 130 S.Ct. 876 (internal quotation mark omitted), neither may the government invidiously amplify one group of citizens' speech and reduce that of all other citizens in order to influence the outcome of elections, *see Shapiro*, 203 F.Supp.3d at 598 ("While citizens have no right to be assigned to a district that is likely to elect a representative that shares their views, the State also *may not intentionally drown out the voices of certain voters* by reason of their views." (emphasis added)). That is particularly true in the republican form of government adopted by the Framers, in which elected officials represent the interests of "the People" in making governing decisions. U.S. Const. art. I, § 2; *see infra* Part V. When a legislature draws a congressional districting plan designed to enhance the electoral power of voters likely to support candidates of a favored party and the districting plan achieves that intended goal by electing more Representatives from the favored party than would have prevailed under an unbiased plan—as was the case with the 2016 Plan in the 2016 election—then the legislature unconstitutionally has "enhanced the relative voice" of the favored party in Congress, at the expense of the viewpoint of the supporters of disfavored parties.

[60] Contrary to Legislative Defendants' assertions, the 2016 Plan's chilling effects and adverse impacts are more than *de minimis*. Even a "slight" burden on "a political party, an individual voter, or a discrete class of voters" can violate the First Amendment if not supported by a justification of commensurate magnitude—as is the case here. *See Crawford*, 553 U.S. 181, 189–90, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008) (opinion of Stevens, J.). And the myriad burdens on political speech and associational rights attributable to the 2016 Plan—including decreased voter engagement, difficulty raising money and attracting candidates, and vote dilution—are of a different magnitude than numerous retaliatory actions that courts have found to constitute more than *de minimis* burdens on First Amendment rights. *See, e.g.*, *Hines v. Gomez*, 108 F.3d 265, 269 (9th Cir. 1997) (filing of single "false [disciplinary] charge infringed ... First Amendment right[s]"); *Crawford–El v. Britton*, 93 F.3d 813, 826 (D.C. Cir. 1996) ("[P]ecuniary losses ... sustained in the form of the costs of shipping ... boxes and replacing clothing, though small, might well deter a person of ordinary firmness ... from speaking again."), *vacated on other grounds*, 523 U.S. 574, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998); *Sloman v. Tadlock*, 21 F.3d 1462, 1470 (9th Cir. 1994) (holding that factfinder could reasonably conclude that a police officer's "decisions to issue a citation and warnings to" a citizen expressing his political beliefs "chilled the political expression of [the citizen] and his group"); *see also Anderson*, 460 U.S. at 792, 103 S.Ct. 1564 (1983) (finding that plaintiff candidate was burdened by election law that made "[v]olunteers ... more difficult to recruit and retain, media publicity and campaign contributions ... more difficult to secure, and voters ... less interested in the campaign," even in the absence of evidence the candidate would have prevailed in election).

***69** Taken together, we find that Plaintiffs' evidence establishes that the 2016 Plan's pro-Republican bias had the effect of chilling the political speech and associational rights of individuals and entities that support non-Republican candidates. And we further find that the 2016 Plan adversely affected such individuals' and entities' First Amendment rights by diluting the electoral speech and

power of voters who support non-Republican candidates. Therefore, we find that Plaintiffs' evidence is more-than-adequate to establish that the 2016 Plan burdened their political speech and associational rights.

3.

Like the burden requirement, the causation requirement derives from both First Amendment retaliation and election regulation cases. In retaliation cases, the causation element not only requires a plaintiff to demonstrate retaliatory intent, it also allows a governmental actor to escape liability if the actor demonstrates it would have taken the challenged action "even in the absence of the protected conduct." *Mt. Healthy*, 429 U.S. at 287, 97 S.Ct. 568; *Hartman*, 547 U.S. at 260, 126 S.Ct. 1695 (explaining that a governmental "action colored by some degree of bad motive does not amount to a constitutional tort if that action would have been taken anyway"). Similarly, the *Anderson*/*Burdick* framework applied in election regulation cases requires that courts assess " 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.' " *Burdick*, 504 U.S. at 434, 112 S.Ct. 2059 (quoting *Anderson*, 460 U.S. at 789, 103 S.Ct. 1564, and *Tashjian*, 479 U.S. at 213–14, 107 S.Ct. 544). Accordingly, under the causation prong, a challenged districting plan that burdens political speech and associational rights nonetheless passes First Amendment muster if legitimate state interests, unrelated to the redistricting body's intent to burden the rights of supporters of a disfavored party, justify the First Amendment burdens imposed by the plan.

As explained above, the 2016 Plan burdens First Amendment rights both by chilling voters, candidates, and parties' participation in the political process and by diluting the electoral power of supporters of non-Republican candidates. In evaluating Plaintiffs' claims under the Equal Protection Clause, we found that neither North Carolina's political geography nor any other legitimate redistricting objective justified the 2016 Plan's subordination of the interests of non-Republican voters. *See supra* Part III.C. And it is axiomatic that the government has no legitimate interest in "restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others." *Buckley*, 424 U.S. at 48–49, 96 S.Ct. 612. Accordingly, we find that the General Assembly's discriminatory animus against non-Republican voters, candidates, and parties caused the 2016 Plan's burdens on such voters, candidates, and parties' political speech and associational rights.

* * * * *

In sum, we find (1) that the 2016 Plan was intended to disfavor supporters of non-Republican candidates based on those supporters' past expressions of political beliefs, (2) that the 2016 Plan burdened such supporters' political speech and associational rights, and (3) that a causal relationship existed between the General Assembly's discriminatory motivation and the First Amendment burdens imposed by the 2016 Plan. Accordingly, we conclude that the 2016 Plan violates the First Amendment.

V.

Finally, we turn to Common Clause Plaintiffs' claims under Article I of the Constitution. Common Cause Plaintiffs assert the 2016 Plan runs afoul of two provisions in Article I: Article I, section 2, which provides that the "House of Representatives shall be composed of Members chosen ... by the People," and the Elections Clause, which provides that "the Times, Places and Manner of holding Elections for ... Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations," U.S. Const. art. I, § 4, cl. 1. Although Common Cause Plaintiffs assert distinct claims under Article 1, section 2 and the Elections Clause, framing era records and Supreme Court doctrine reveal that the two provisions are closely intertwined.

A.

***70** **[61]** **[62]** Because the right to elect Representatives to Congress "ar[ose] from the Constitution itself," the States have no "reserved" or "sovereign" authority to adopt laws or regulations governing congressional elections.[38] *Thornton*, 514 U.S. at 802–05, 115 S.Ct. 1842; *id.* at 802, 115 S.Ct. 1842 ("As Justice Story recognized, 'the states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government, which the constitution does not delegate

to them.... No state can say, that it has reserved, what it never possessed.' " (quoting Story, 1 Commentaries on the Constitution of the United States § 627 (3d ed. 1858)). Rather, the Constitution—and the Elections Clause in particular—delegates to the States the power to impose certain types of laws and regulations governing congressional elections, including laws or regulations establishing congressional districts. *Id.* at 802–05, 115 S.Ct. 1842; *see also Brown v. Sec'y of State of Fla.*, 668 F.3d 1271, 1283 (11th Cir. 2012) ("[S]tates have the delegated power under the Elections Clause to create districts for congressional elections."). But unless the Elections Clause or another constitutional provision delegates to the States the authority to impose a particular type of election law or regulation, "such a power does not exist." *Thornton*, 514 U.S. at 805, 115 S.Ct. 1842.

The plain language of the Elections Clause confers on the States the authority to regulate the "Times, Places, and Manner" of holding congressional elections. U.S. Const. art. I, sec. 4. During the Constitutional Convention, James Madison provided a list of examples of the types of regulations that would fall within States' authority to regulate the "Times, Places, and Manner" of holding elections: "whether the electors should vote by ballot or *viva voce*, should assemble at this place or that place; should be divided into districts or all meet at one place, sh[oul]d all vote for all the representatives; or all in a district vote for a number allotted to the district." *Debates* at 423–24. The Framers, therefore, "understood the Elections Clause as a grant of authority to issue *procedural regulations*." *Thornton*, 514 U.S. at 833, 115 S.Ct. 1842 (emphasis added).

[63] In accordance with the intent of the Framers, the Supreme Court has held that "[t]he Elections Clause gives States authority 'to enact numerous requirements as to *procedure* and safeguards which experience shows are necessary in order to enforce the fundamental right involved.' " *Id.* (emphasis added) (quoting *Smiley v. Holm*, 285 U.S. 355, 366, 52 S.Ct. 397, 76 L.Ed. 795 (1932)). Put differently, the Elections Clause empowers the States to promulgate "regulations designed to ensure that elections are fair and honest and that some sort of order rather than chaos accompanies the democratic processes." *Id.* at 834–35, 115 S.Ct. 1842 (emphasis added) (internal quotation marks and alterations omitted).

[64] **[65]** The States' broad, delegated power under the Election Clause, however, is not without limit. *See, e.g.*, *Cook v. Gralike*, 531 U.S. 510, 527, 121 S.Ct. 1029, 149 L.Ed.2d 44 (2001) (Kennedy, J. concurring) ("The Elections Clause thus delegates but limited power over federal elections to the States."); *Montano v. Lefkowitz*, 575 F.2d 378, 385 (2d Cir. 1978) (Friendly, J.) ("*Wesberry* makes clear that the apparent breadth of the power granted to state legislatures by [the Elections Clause], is not a carte blanche."). In particular, "in exercising their powers of supervision over elections and in setting qualifications for voters, the States may not infringe upon basic constitutional protections." *Kusper*, 414 U.S. at 56–57, 94 S.Ct. 303; *see also Tashjian*, 479 U.S. at 217, 107 S.Ct. 544 ("The power to regulate the time, place, and manner of elections does not justify, without more, the abridgement of fundamental rights."). For example, in *Wesberry*, the Court held that the Elections Clause does not "immunize state congressional apportionment laws which debase a citizen's right to vote." 376 U.S. at 7, 84 S.Ct. 526. Likewise, the Elections Clause does not serve "as a source of power [for States] to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." *Thornton*, 514 U.S. at 833–34, 115 S.Ct. 1842. Put differently, the States' authority under the elections clause extends *only* to "*neutral* provisions as to the time, place, and manner of elections." *Gralike*, 531 U.S. at 527, 121 S.Ct. 1029 (emphasis added).

B.

***71** Under this precedent, we conclude that the 2016 Plan exceeds the General Assembly's delegated authority under the Elections Clause for three reasons: (1) the Elections Clause did not empower State legislatures to disfavor the interests of supporters of a particular candidate or party in drawing congressional districts; (2) the 2016 Plan's pro-Republican bias violates other constitutional provisions, including the First Amendment, the Equal Protection Clause, and Article I, section 2; and (3) the 2016 Plan represents an impermissible effort to "dictate electoral outcomes" and "disfavor a class of candidates." *Thornton*, 514 U.S. at 833–34, 115 S.Ct. 1842.

1.

The Elections Clause was the product of a vigorous debate at the Constitutional Convention among the delegates regarding whether, and to what extent, to lodge authority over the regulation of congressional elections in Congress. On the one hand, those who feared the power of the new federal government did not want to give Congress the ability to override state election regulations. For example, the Anti–Federalist propagandist Federal Farmer argued that placing authority to promulgate election regulations in the national government would allow Congress to draft election laws that favored particular representatives or viewpoints. *See Greene, supra* at 1033, 119 S.Ct. 1936. " '[T]he general legislature may ... evidently so regulate elections as to secure the choice of any particular description of men.' " *Id.* (quoting Letter from the Federal Farmer (Oct. 10, 1787), *reprinted in* Origins of the House of Representatives: A Documentary Record 52, 53 (Bruce A. Ragsdale ed., 1990)). Other Anti–Federalists, including Patrick Henry, expressed similar concerns about Congress manipulating election regulations to favor a particular group of candidates or their supporters. *Id.* at 1036.

On the other hand, supporters of congressional control over state election regulations—the position that ultimately prevailed—emphasized the risk that States would refuse to hold elections, and thereby strip the federal government of power, or, more relevant to the case at hand, enact election regulations—including districting plans—that would favor particular factions. For example, James Madison argued that "[w]henever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed." *Debates* at 424. Likewise, a delegate at the Massachusetts ratifying convention "warned that 'when faction and party spirit run high,' a legislature might take actions like 'making an unequal and partial division of the states into districts for the election of representatives.' " *Ariz. State Leg.*, 135 S.Ct. at 2672 (quoting Theophilus Parsons in Debate in Massachusetts Ratifying Convention (16–17, 21 Jan. 1788), in 2 The Founders' Constitution 256 (P. Kurland & R. Lerner eds. 1987)).

Accordingly, although the Framers disagreed as to whether, and to what extent, the Elections Clause should empower Congress to displace state election regulations, the Framers agreed that, regardless of whether Congress retained such authority, the Elections Clause should not empower legislative bodies—be they state or federal—to impose election regulations that would favor or disfavor a particular group of candidates or voters. *See Thornton*, 514 U.S. at 833 n.47, 115 S.Ct. 1842 (" 'The constitution expressly provides that the choice shall be by the people, which cuts off both from the general and state Legislatures the power of so regulating the mode of election, as to deprive the people of a fair choice.' " (quoting "The Republican," Connecticut Courant (Hartford, Jan. 7, 1788), 1 Bailyn 710, 713)). To that end, the Supreme Court has expressly recognized that the Elections Clause was "intended to act as a safeguard against manipulation of electoral rules by politicians and factions in the States to entrench themselves or place their interests over those of the electorate." *Ariz. State Leg.*, 135 S.Ct. at 2672.

***72** **[66]** As explained above in drawing the 2016 Plan, the General Assembly "manipulat[ed]," *id.*, district lines in order to subordinate the interests of non-Republican candidates and their supporters and entrench Republican candidates in power. The 2016 Plan, therefore, does not amount to a "neutral," *Gralike*, 531 U.S. at 527, 121 S.Ct. 1029, or "fair" procedural regulation, *Thornton*, 514 U.S. at 853, 115 S.Ct. 1842, but rather an effort to achieve an impermissible substantive goal—providing the Republican party with a "Partisan Advantage," Ex. 1007. Accordingly, the 2016 Plan exceeds the General Assembly's delegated authority under the Elections Clause.

2.

[67] We further conclude that the 2016 Plan's favoring of Republican candidates and their supporters and disfavoring of non-Republican candidates and their supporters violates the Elections Clause by "infring[ing] upon basic constitutional protections." *Kusper*, 414 U.S. at 56–57, 94 S.Ct. 303. As explained above, the 2016 Plan violates the Equal Protection Clause because it reflects a successful, and unjustified, effort by the General Assembly to subordinate the interests of non-Republican voters and entrench Republican Representatives in power. *See supra* Part III. Additionally, as an intentional, and successful, effort to burden the speech and associational rights of supporters of non-Republican candidates, the 2016 Plan violates the First Amendment. *See supra* Part IV.

[68] The 2016 Plan also violates Article I, section 2's grant of authority to "the People" to elect their

Representatives. The Framers decision to vest the power to elect Representatives in "the People" was—and is—significant. This feature differentiated the House of Representatives from every other federal government body at the time of the Framing. It is "the only textual reference to 'the People' in the body of the original Constitution and the only express, original textual right of the People to direct, unmediated political participation in choosing officials in the national government." Richard H. Pildes, *The Constitution and Political Competition*, 30 Nova L. REV. 253, 267 (2006). For example, at the time, Senators were elected by the state legislatures. U.S. Const. art. I, § 3 *repealed by* U.S. Const. amend. XVII. The President was and still is elected through an intermediate body—the Electoral College. U.S. Const. art. II, § 1. Only the House of Representatives was directly accountable to the People.

Article I, section 2 was a product of the so-called Great Compromise, which resolved a bitter dispute between delegates regarding whether representation in the national legislature would be determined by population, with representatives directly elected by the people, or would be awarded equally among the States, with representatives elected by state legislatures. *See Wesberry*, 376 U.S. at 12–13, 84 S.Ct. 526. Under the Great Compromise, the Senate represented the interests of the States, each State was awarded equal representation in that body, and Senators were elected by state legislatures. *Id.* at 13, 84 S.Ct. 526. By contrast, "[t]he House of Represen[t]atives, the Convention agreed, was to represent the people as individuals, and on the basis of complete equality for each voter." *Id.* at 14, 84 S.Ct. 526. The House of Representatives, therefore, provided "a direct link between the National Government and the people of the United States." *Thornton,* 514 U.S. at 803, 115 S.Ct. 1842.

The delegates at the Constitutional Convention decided to have the House of Representatives elected directly by the People for two major reasons. First, the Framers viewed popular election of at least one branch of government as an essential feature of a government founded on democratic principles. James Madison explained, for example, that "[a]s it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the [House of Representatives] should have an immediate dependence on, and an intimate sympathy with, the people." The Federalist No. 52, at 295 (James Madison). Other delegates at the constitutional convention also emphasized the critical importance of direct popular election of representatives in any republican form of government. *Debates* at 39 (reporting that George Mason "argued strongly for an election of the larger branch by the people, stating that "[i]t was to be the grand depository of the democratic principle of the government"); *id.* at 167, 124 S.Ct. 619 (reporting that James Wilson stated he "considered the election of the first branch by the people not only as the corner Stone, but as the foundation of the fabric: and that the difference between a mediate and immediate election was immense"). Put simply, Article I, Section 2 gives effect to the Framers' belief that " '[t]he true principle of a republic is, that the people should choose whom they please to govern them.' " *Powell*, 395 U.S. at 540–41, 89 S.Ct. 1944 (quoting Alexander Hamilton in 2 Debates on the Federal Constitution 257 (J. Elliot ed. 1876)).

***73** The Framers also saw popular election of Representatives as an important check on the States' power. *See, e.g.*, *Debates* at 40 (reporting that James Wilson stated that: "no government could long subsist without the confidence of the people. In a republican Government, this confidence was peculiarly essential.... All interference between the general and local government should be obviated as much as possible."); *id.* at 167 (reporting that Alexander Hamilton did not want state legislatures to elect both chambers of Congress, because "State influence ... could not be too watchfully guarded against"); *id.* (reporting that Rufus King worried that "the Legislatures would constantly choose men subservient to their own views as contrasted to the general interest; and that they might even devise modes of election that would be subversive of the end in view"). In sum, "the Framers, in perhaps their most important contribution, conceived of a Federal Government directly responsible to the people, possessed of direct power over the people, and chosen directly, *not by States, but by the people*." *Thornton*, 514 U.S. at 821, 115 S.Ct. 1842 (emphasis added).

The 2016 Plan's invidious partisanship runs contrary to the Constitution's vesting of the power to elect Representatives in "the People." U.S. Const. art. I, § 2. To begin, partisan gerrymanders, like the 2016 Plan, violate "the core principle of republican government" preserved in Article I, Section 2—"namely, that the voters should choose their representatives, not the other way around." *Ariz. State Leg.*, 135 S.Ct. at 2677

(internal quotation marks omitted). And by favoring supporters of Republican candidates over supporters of non-Republican candidates, the 2016 Plan "defeat[s] the principle solemnly embodied in the Great Compromise" because it reflects a successful effort by the General Assembly to "draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others." *Wesberry*, 376 U.S. at 14, 84 S.Ct. 526.

Additionally, rather than having " 'an habitual recollection of their dependence on the people,' " as the Framers intended, *Ariz. State Leg.*, 135 S.Ct. at 2677 (quoting The Federalist No. 57, at 320 (James Madison)), partisan gerrymanders render Representatives responsive to the controlling faction of the State legislature that drew their districts, *Vieth*, 541 U.S. at 331–32, 124 S.Ct. 1769 (Stevens, J. dissenting) ("The problem [with partisan gerrymandering], simply put, is that the will of the cartographers rather than the will of the people will govern."). By rendering Representatives responsive to the state legislatures who drew their districts rather than the People, the 2016 Plan also upsets the careful balance struck by the Framers in the Great Compromise by "interpos[ing]" the General Assembly between North Carolinians and their Representatives in Congress. *See Gralike*, 531 U.S. at 527, 121 S.Ct. 1029 (Kennedy, J., concurring) ("A State is not permitted to interpose itself between the people and their National Government as it seeks to do here."). "Neither the design of the Constitution nor sound principles of representative government are consistent with the right or power of a State to interfere with the direct line of accountability between the National Legislature and the people who elect it." *Id.* at 528, 121 S.Ct. 1029.

3.

Finally, the 2016 Plan amounts to a successful effort by the General Assembly to "disfavor a class of candidates" and "dictate electoral outcomes." *Thornton*, 514 U.S. at 833–34, 115 S.Ct. 1842. In *Cook v. Gralike*, 531 U.S. 510, 121 S.Ct. 1029, 149 L.Ed.2d 44 (2001), the Court considered an amendment to a state constitution that "instruct[ed]" each member of the state's congressional delegation "to use all of his or her delegated powers to pass the Congressional Term Limits Amendment," *id.* at 514, 121 S.Ct. 1029 (majority op.). To advance that goal, the amendment further provided that "the statement 'DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS' be printed on all primary and general [election] ballots adjacent to the name of a[n incumbent] Senator or Representative who fails to take any of one of eight [enumerated] legislative acts in support of the proposed amendment." *Id.* And the amendment further required that primary and general election ballots expressly indicate if a nonincumbent candidate " 'DECLINED TO PLEDGE TO SUPPORT TERM LIMITS.' " *Id.* at 514–15, 121 S.Ct. 1029.

***74** The Court concluded that the amendment exceeded the state's authority under the Elections Clause. *Id.* at 524–27, 121 S.Ct. 1029. In reaching this conclusion, the Court reaffirmed that because the Elections Clause constitutes the States' sole source of "authority over congressional elections," "the States may regulate the incidents of such elections ... *only* within the exclusive delegation of power under the Elections Clause." *Id.* at 522–23, 121 S.Ct. 1029 (emphasis added). The Court concluded the amendment exceeded that delegated authority for two principal reasons. First, the amendment was "plainly designed to favor candidates who are willing to support the particular form of term limits amendment set forth in its text and to disfavor those who either oppose term limits entirely or would prefer a different proposal." *Id.* at 523–25, 121 S.Ct. 1029. Second, the placement of the "pejorative" or "negative" labels next to candidates who opposed the term limits amendment on the ballot "handicap[ped] [such] candidates 'at the most crucial stage in the election process—the instant before the vote is cast.' " *Id.* at 524–25, 121 S.Ct. 1029 (quoting *Anderson v. Martin*, 375 U.S. 399, 402, 84 S.Ct. 454, 11 L.Ed.2d 430 (1964)). By "handicap[ping]" candidates who opposed the term limits amendment, the state constitutional amendment represented an "attempt[t] to 'dictate election outcomes,' " which "simply is not authorized by the Elections Clause." *Id.* at 524, 526, 121 S.Ct. 1029 (quoting *Thornton*, 514 U.S. at 833–34, 115 S.Ct. 1842); *see also Chamness v. Bowen*, 722 F.3d 1110, 1121 (9th Cir. 2013) (explaining that, under *Gralike*, the Elections Clause prohibits state election regulations that "dictate political outcomes or invidiously discriminate against a class of candidates"); *Brown*, 668 F.3d at 1284 (explaining that the Elections Clause, as interpreted in *Thornton* and *Gralike*, does not authorize a state legislature to enact an election regulation "meant

to prevent or severely cripple the election of particular candidates").

Like the state constitutional amendment at issue in *Gralike*, the Partisan Advantage criterion—and the record evidence regarding Representative Lewis, Senator Rucho, and Dr. Hofeller's implementation of that criterion in drawing the 2016 Plan, *see supra* Parts I.B.2, III.A.2—establishes that the 2016 Plan was intended to disfavor non-Republican candidates and supporters of such candidates and favor Republican candidates and their supporters. And like the constitutional amendment in *Gralike*, the General Assembly's express intent to draw a redistricting plan that would elect a congressional delegation composed of 10 Republicans and 3 Democrats —coupled with the fact that the 2016 election under the 2016 Plan yielded a congressional delegation with the intended composition—demonstrates that the 2016 Plan amounted to a *successful* "attempt[ ] to 'dictate election outcomes.' " *Gralike*, 531 U.S. at 526, 121 S.Ct. 1029 (quoting *Thornton*, 514 U.S. at 833–34, 115 S.Ct. 1842). Accordingly, the 2016 Plan's demonstrated partisan favoritism "simply is not authorized by the Elections Clause." *Id.*

VI.

[69] **[70]** Having concluded that the 2016 Plan violates the Equal Protection Clause, the First Amendment, and Article I of the Constitution, we now must determine the appropriate remedy. Absent unusual circumstances, "such as where an impending election is imminent and a State's election machinery is already in progress," courts should take "appropriate action to insure that no further elections are conducted under the invalid plan." *Reynolds*, 377 U.S. at 585, 84 S.Ct. 1362. As the 2018 general election remains many months away and the 2018 election cycle has not yet formally begun, we find no such circumstances exist. Accordingly, we enjoin Defendants from conducting any further elections using the 2016 Plan.

[71] As to the drawing of a remedial plan, as a general rule, once a federal court concludes that a state districting plan violates the Constitution or federal law, it should "afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise ... its own plan." *Wise v. Lipscomb*, 437 U.S. 535, 540, 98 S.Ct. 2493, 57 L.Ed.2d 411 (1978). This case presents an exceptional circumstance, however: the General Assembly enacted the 2016 Plan after another panel of this Court invalidated the 2011 Plan as a racial gerrymander. *Harris*, 159 F.Supp.3d at 627. When a court finds a remedial districting plan also violates the Constitution, courts generally do not afford a legislature a second "bite-at-the-apple" to enact a constitutionally compliant plan. *See Chapman v. Meier*, 420 U.S. 1, 27, 95 S.Ct. 751, 42 L.Ed.2d 766 (1975) (holding that if a state fails to enact "a constitutionally acceptable" remedial districting plan, "the responsibility falls on the District Court"); *Reynolds*, 377 U.S. at 586, 84 S.Ct. 1362 (holding that a district court "acted in a most proper and commendable manner" by imposing its own remedial districting plan, after the district court concluded that the remedial plan adopted by state legislature failed to remedy constitutional violation).

***75** **[72]** We nevertheless conclude that the General Assembly is entitled to a second opportunity to draw a constitutional congressional districting plan. Although the Supreme Court had recognized that partisan gerrymanders "are incompatible with democratic principles," *Ariz. State Leg.*, 135 S.Ct. at 2658 (internal quotation marks and alterations omitted), and that partisan gerrymandering claims were justiciable under the Equal Protection Clause, *Bandemer*, 478 U.S. at 123, 106 S.Ct. 2797 (plurality op.), at the time the General Assembly drew the 2016 Plan, the Court had not established a legal standard for adjudicating partisan gerrymandering claims. In such circumstances, we decline to pre-empt the legislature's primary role in redistricting and reapportionment.

In providing the General Assembly with such an opportunity, we also recognize that North Carolina voters have been deprived of a constitutional congressional districting plan for the better part of the decade. The Constitution entitles those voters a remedy that "so far as possible eliminate[s] the discriminatory effects of the past as well as bar[s] like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154, 85 S.Ct. 817, 13 L.Ed.2d 709 (1965). Enacting new congressional districts as quickly as possible will, at least partially, remedy the discriminatory effects of the 2016 Plan by giving elected legislators an incentive to "focus on representing the interests of the constituents in their new districts—rather than the districts we held constituted unconstitutional [partisan] gerrymanders."

Covington v. North Carolina, —— F. Supp. 3d. ——, 2017 WL 4162335, No. 15-cv-399 (M.D.N.C. Sept. 19, 2017). That consideration—coupled with the fast approaching deadline for candidates to file to compete in the 2018 election and our obligation to review any remedial plan to ensure that it remedies the constitutional violation and is not otherwise "legally unacceptable," *McGhee v. Granville Cty., N.C.*, 860 F.2d 110, 115 (4th Cir. 1988)—counsels in favor of allowing the General Assembly a shorter window to remedy the constitutional violation. Accordingly, the General Assembly will have until 5 p.m. on January 24, 2018, to enact a remedial districting plan. That deadline will allow the General Assembly two weeks to draw a remedial plan, the amount of time state law affords the General Assembly to draw remedial districting plans. N.C. Gen. Stat. § 120–2.4(a).

No later than 5 p.m. on January 29, 2018, the State shall file with the Court any enacted proposed remedial plan, along with:

1. transcripts of all committee hearings and floor debates related to the proposed remedial plan;

2. the "stat pack" for the proposed remedial plan;

3. a description of the process the General Assembly, and any constituent committees or members thereof, followed in drawing and enacting the proposed remedial plan, including, without limitation, the identity of all participants involved in the process;

4. any alternative plans considered by the General Assembly, any constituent committee responsible for drawing the remedial plan, or the leadership of the General Assembly or any such committee; and

5. the criteria the General Assembly, any constituent committee responsible for drawing the remedial plan, and the leadership of the General Assembly or any such committee applied in drawing the proposed remedial plan, including, without limitation, any criteria related to partisanship, the use of political data, or the protection of incumbents.

No later than 5 p.m. on February 5, 2018, Plaintiffs and other interested parties may file objections to any enacted proposed remedial plan and submit an alternative remedial plan. No later than 5 p.m. on February 12, 2018, Defendants may file responses to any such objections.

***76** Given the fast-approaching candidate-filing deadline, we further find it appropriate to take steps to ensure the timely availability of an alternative remedial plan for use in the event the General Assembly does not enact a remedial plan or enacts a plan that fails to remedy the constitutional violation or is otherwise legally unacceptable. To that end, we intend to appoint in short order a Special Master pursuant to Federal Rule of Civil Procedure 53 to assist the Court in drawing an alternative remedial plan. *Rodriguez v. Pataki*, 207 F.Supp.2d 123, 125 (S.D.N.Y. 2002) ("[T]he 'eleventh hour' is upon us, if indeed it has not already passed. It is therefore necessary for this Court to prepare for the possibility that this Court will be required to adopt an appropriate redistricting plan."). Accordingly, we direct the parties to confer and file no later than January 16, 2018, a list of three qualified and mutually acceptable candidates to serve as Special Master. In the event the parties fail to agree as to a list of candidates, the Court may identify a special master without input from the parties.

SO ORDERED

OSTEEN, JR., District Judge, concurring in part and dissenting in part:

I concur with the well-reasoned opinion of the majority that Plaintiffs have met their burden of proving a prima facie partisan gerrymandering claim under the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs have shown both an intent to subordinate the interests of non-Republican voters and entrench Republican candidates in power, all with the effect of controlling electoral outcomes to continue a 10–3 Republican control of Congressional seats. However, in keeping with the standard established by the Supreme Court for racial gerrymandering claims, I would require Plaintiffs to prove that partisanship was the predominant factor motivating the General Assembly's decision to draw the 2016 Plan as it did. Because I agree that Plaintiffs met their burden, and also agree that Defendants have not justified the effects of the 2016 Plan, I concur with the majority's conclusion that the Plan violates the Equal Protection Clause.

I also join the majority's conclusion that Plaintiffs have shown that the 2016 Plan violates Article I, Sections 2 and 4 of the United States Constitution by proving that the drawers of the Plan intended to dictate and

preordain election outcomes. However, assuming that partisan gerrymandering claims are justiciable under the First Amendment, I am unconvinced that Plaintiffs have proven an injury to their First Amendment rights, and dissent from the majority's conclusion that the 2016 Plan violates the First Amendment.

Before turning to my analysis of the claims in this case, I write to express my concerns with these claims generally. If writing on a blank slate, I would rely solely upon Article I to grant relief to Plaintiffs. In my opinion, Article I, Sections 2 and 4 set a clear limit on unconstitutional political gerrymandering: when the legislature, through its redistricting plan, controls the outcome of the election, whether as a result of partisan consideration or another factor, the plan is unconstitutional. Beyond a prohibition on dictating the outcome of an election, which protects the right of the people granted in Article I, Section 2, I would not find the Constitution provides additional protection to the voting strength of members of a political party or group so as to prohibit partisan considerations in redistricting.

Subject to regulation by Congress, *see* 2 U.S.C. § 2, the Constitution delegates redistricting power for federal elections to the States and their legislatures. [39] Legislative action is a political process, and issues addressed by those legislative bodies affecting constitutional questions —redistricting, Second Amendment, First Amendment, abortion, and the like—are inherently political in nature. As the plurality in *Davis v. Bandemer* observed, "[i]t would be idle ... to contend that any political consideration taken into account in fashioning a reapportionment plan is sufficient to invalidate it.... Politics and political considerations are inseparable from districting and apportionment." *Davis v. Bandemer*, 478 U.S. 109, 128, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986) (plurality op.) (citations omitted) (quoting *Gaffney v. Cummings*, 412 U.S. 735, 752, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973)). Although *Bandemer* has been abrogated to some degree, *see Common Cause v. Rucho*, 240 F.Supp.3d 376, 387 (M.D.N.C. 2017) (per curiam), this observation remains true today.

***77** Previously in this case, we held that the partisan gerrymandering claims presented here were justiciable under the Equal Protection Clause, *see id.* at 389, and I agree with that conclusion for the reasons described in the memorandum opinion. While the majority opinion presents additional, logical, and compelling analysis of applicable cases and precedent, I continue to have fundamental concerns over the application of Equal Protection and First Amendment principles to partisan gerrymandering.

The Elections Clause limits partisan considerations in redistricting by prohibiting action that dictates election results. Analysis of partisan gerrymandering claims under the Equal Protection Clause and the First Amendment attempt to set a limit on partisan advantage somewhere between a politically neutral redistricting and the Elections Clause prohibition of dictating election results, a limit I am not convinced is required by those constitutional provisions. If there should be additional limits on partisan consideration beyond those of Article I, the Constitution provides the people of this State with the additional power to "seek relief from Congress, which can make or alter the regulations prescribed by the legislature. And the Constitution gives them another means of change. They can follow the lead of the reformers who won passage of the Seventeenth Amendment." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, —— U.S. ——, 135 S.Ct. 2652, 2692, 192 L.Ed.2d 704 (2015) (Roberts, C.J., dissenting). Partisan advantage is a part of all legislative action. Remedies exist for legislative overreach, even in reapportionment, so long as the voters, and not the legislature, are controlling the outcomes of elections.

Nevertheless, I agree that, absent a contrary ruling from the Supreme Court, partisan gerrymandering claims are justiciable under the Equal Protection Clause, and so the court is obliged to articulate a standard for adjudication. Having found that Plaintiffs have met that standard in this case, I join the majority opinion in finding an Equal Protection violation.

I. Equal Protection

Both the majority opinion and the Supreme Court have spoken of evaluating Equal Protection claims in political gerrymandering cases in terms of a "discriminatory intent." As Justice Kennedy noted in *Vieth*, "[a] determination that a gerrymander violates the law must rest ... on a conclusion that [political] classifications, though generally permissible, were applied in an invidious manner or in a way unrelated to any legitimate legislative objective." *Vieth v. Jubelirer*, 541 U.S. 267, 307, 124

S.Ct. 1769, 158 L.Ed.2d 546 (Kennedy, J., concurring in the judgment); *see also Gaffney*, 412 U.S. at 751, 93 S.Ct. 2321 ("A districting plan may create ... districts [that are] invidiously discriminatory because they are employed 'to minimize or cancel out the voting strength of racial or political elements of the voting population.' " (quoting *Fortson v. Dorsey*, 379 U.S. 433, 439, 85 S.Ct. 498, 13 L.Ed.2d 401 (1965))). Determining, then, whether a legislative redistricting body's partisan considerations amount to an invidiously discriminatory intent is critical to determining whether the plan it produces violates the Equal Protection Clause.

Under the intent prong, League Plaintiffs claim that the Republican-led state legislature enacted the 2016 Plan "with the aim of disadvantaging one party's (and favoring the other party's) voters and candidates." (League of Women Voters Pls.' Post–Trial Br. 9, Nov. 6, 2017, ECF No. 113.) The aim of the Plan, as alleged by Common Cause Plaintiffs, was to "achieve a partisan goal." (Common Cause Pls.' Post–Trial Br. ("Common Cause Br.") 7, Nov. 6, 2017, ECF No. 116.) Stating the obvious, the alleged discriminatory intent was an effort to gain partisan advantage; that is, the Republican majority sought to draw districts to elect more Republican representatives, which in turn would disadvantage Democratic voters. In my opinion, discriminatory intent and partisan advantage are two sides of the same coin, that is, the political process. As a general proposition, the political process is one in which one side seeks to gain political advantage over the opposing party or issue. It is difficult to conceive of any political issue, including redistricting, where opposing sides would not possess some intent to gain partisan advantage and thereby hold some form of discriminatory intent as that term is used in this case.

***78** The Court has recognized many times in redistricting and apportionment cases that some degree of partisanship and political consideration is constitutionally permissible in a redistricting process undertaken by partisan actors. *See, e.g.*, *Hunt v. Cromartie*, 526 U.S. 541, 551, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999) ("Our prior decisions have made clear that a jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact."); *Miller v. Johnson*, 515 U.S. 900, 914, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995) ("[R]edistricting in most cases will implicate a political calculus in which various interests compete for recognition ...."); *Gaffney*, 412 U.S. at 753, 93 S.Ct. 2321 ("Politics and political considerations are inseparable from districting and apportionment."); *see also Cooper v. Harris*, —— U.S. ——, 137 S.Ct. 1455, 1488, 197 L.Ed.2d 837 (2017) (Alito, J., concurring in the judgment in part and dissenting in part) (recognizing the constitutionality of at least some amount of political gerrymandering); *Whitford v. Gill*, 218 F.Supp.3d 837, 934–35 (W.D. Wis. 2016) (Griesbach, J., dissenting) (collecting cases), *appeal docketed*, 137 S.Ct. 2289 (2017). And Congress, though it could presumably act to limit partisan gerrymandering under its Article I, Section 4 authority, has chosen only to require single-member districts. *See* 2 U.S.C. § 2c.

I do not find, therefore, that the Constitution forbids a political body from taking into account partisan considerations, and indeed partisan advantage, when producing a redistricting plan. A plaintiff satisfies the majority's intent requirement "by introducing evidence establishing that the state redistricting body acted with an intent to 'subordinate adherents of one political party and entrench a rival party in power.' " (Maj. Op. at 86 (quoting *Ariz. State Legislature*, 135 S.Ct. at 2658).) Because I find that this standard of intent sweeps more broadly than required by the Equal Protection Clause, I am unable to agree with the intent prong of the majority's three-prong test.

Rather, I would require Plaintiffs to prove that this intent predominated over other considerations in the redistricting process. Although "[l]egislation is frequently multipurposed," *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 n.11, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977), the Supreme Court has expressly held that courts are equipped, in the particular context of redistricting legislation, to discern whether one consideration predominated over others, *see Miller*, 515 U.S. at 915–16, 115 S.Ct. 2475 (holding, in the context of racial gerrymandering cases, that plaintiffs must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district"). I see no reason to believe that courts are not just as well equipped to determine whether partisan considerations predominated. [40] In my view, this level of intent equals the "invidious" application of political classifications required for Plaintiffs to prove the first prong of their prima facie case.

Under this standard, Plaintiffs must show that the redistricting body "subordinated traditional [neutral] districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests," to political considerations. *See id.* at 916, 115 S.Ct. 2475. The majority's opinion details at length the facts and circumstances surrounding the enactment of 2016 Plan, which do not need repeating here. (*See, e.g.*, Maj. Op. at Part I.C, III.A.2–3, III.C.) Suffice it to say that there is ample evidence in the record to find that Plaintiffs have met this burden. In particular, Dr. Hofeller's and legislative Defendants' statements and the lack of transparency and public participation in the map drawing process invite this conclusion.

***79** For example, Dr. Hofeller admitted that he sought "to minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate" under the 2011 Plan. (*See* Dep. of Thomas B. Hofeller ("Hofeller Dep.") 127:19–22, Jan. 24, 2017, ECF Nos. 101–34, 110–1.) Past voting behavior was used to draw the maps. (*See id.* at 132:22–134:13, 159:20–160:12.) After the 2011 Plan was enjoined due to two unconstitutionally racially gerrymandered districts, Dr. Hofeller was instructed to draw new maps that would maintain the existing partisan makeup of the congressional delegation achieved under the racially gerrymandered plan: ten Republicans and three Democrats. (*See id.* at 175:19–23, 188:5–190:2.) Dr. Hofeller began to work on the 2016 Plan on his personal computer after receiving verbal instructions from Representative Lewis, without comment or participation from the public and without written instructions. (*See id.* at 71:6–73:15, 129:8–130:9; Dep. of Rep. David Lewis ("Lewis Dep.") 44:12–24, 46:1–4, 73:19–22, 105:11–106:1, Jan. 26, 2017, ECF Nos. 101–33, 108–3, 110–3, 110–4.) He continued work on the Plan at his home, with Representative Lewis and Senator Rucho, operating under oral directions. (Lewis Dep. 48:19–49:7, 60:1–13; Dep. of Sen. Robert Rucho ("Rucho Dep.") 169:21–170:17, Jan. 25, 2017, ECF Nos. 101–32, 110–5.) Dr. Hofeller then presented the maps to Representative Lewis in "near-final" versions that Representative Lewis intended to submit to the legislature for adoption. (Lewis. Dep. 77:7–20.) In the subsequent committee meeting discussing the 2016 Plan, Representative Lewis noted that "the goal is to elect 10 Republicans and 3 Democrats." (Ex. 1005, at 62:18–19.) Comments from the one public hearing held and written comments solicited and received via the committee's website were not shared with Dr. Hofeller. (Ex. 1004; Rucho Dep. 55:4–56:13.) The official criteria for the 2016 Plan, which included neutral principles as well as partisan criteria, were not adopted until after the maps were mostly completed. (Ex. 1007; Hofeller Dep. 177:9–21.)

In determining whether partisan consideration predominated, intent may be proven by both direct and circumstantial evidence. *Miller*, 515 U.S. at 916, 115 S.Ct. 2475. In this case, the evidence that partisan consideration predominated is substantial, including the limited access to mapping information provided to all legislators and a stated intent of maintaining the current partisan advantage of 10–3. In short, while Dr. Hofeller, under the direction of Senator Rucho and Representative Lewis, considered neutral principles to some extent, (*see, e.g.*, Hofeller Dep. 174:10–25), the evidence shows that these considerations were secondary to Defendants' primary goal of entrenching Republican candidates in power by dictating the outcome of elections held under the 2016 Plan.

I concur with the sections of the majority opinion addressing the effects and justification prongs of its three-part test, and join the majority in holding that the 2016 Plan violates Plaintiffs' rights under the Equal Protection Clause.

II. First Amendment

Assuming that partisan gerrymandering claims are justiciable under the First Amendment,[41] I find that the majority's adopted test would in effect foreclose all partisan considerations in the redistricting process—a result I am unable to conclude that the First Amendment requires—and would allow redress for an injury that Plaintiffs have not proven rises to a constitutional level. Therefore, I respectfully dissent.

No one disputes that the First Amendment protects political expression and association. *See, e.g.*, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339–40, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010); *Buckley v. Valeo*, 424 U.S. 1, 15, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam). But as another court aptly noted in rejecting plaintiffs' claim that the inability to elect a preferred

candidate burdened their political expression, "[p]laintiffs are every bit as free under the new [redistricting] plan to run for office, express their political views, endorse and campaign for their favorite candidates, vote, or otherwise influence the political process through their expression." *Radogno v. Ill. State Bd. of Elections*, No. 1:11-CV-04884, 2011 WL 5025251, at *7 (N.D. Ill. Oct. 21, 2011) (second alteration in original) (quoting *Kidd v. Cox*, No. 1:06-CV-0997-BBM, 2006 WL 1341302, at *17 (N.D. Ga. May 16, 2006)). As the *Radogno* court explained, "[i]t may very well be that Plaintiffs' ability to *successfully elect* their preferred candidate is burdened by the redistricting plan, but that has nothing to do with their First Amendment rights." *Id.* (citing *Washington v. Finlay*, 664 F.2d 913, 927–28 (4th Cir. 1981)).

***80** Plaintiffs are likewise free under the 2016 Plan to "field candidates for office, participate in campaigns, vote for their preferred candidate, or otherwise associate with others for the advancement of common political beliefs." *Id.* (quoting *Kidd*, 2006 WL 1341302, at *17). The fact that some Plaintiffs testified about difficulties involving voter outreach, fundraising, and candidate recruitment, (*see, e.g.*, Dep. of Elizabeth Evans 16:4–9, Apr. 7, 2017, ECF No. 101–7; Dep. of John J. Quinn, III 39:1–3, Apr. 10, 2017, ECF No. 101–22), fails to persuade me that the 2016 Plan objectively chilled the speech and associational rights of the citizens of North Carolina so as to prove a First Amendment violation. [42]

Justice Kennedy, suggesting in *Vieth* that the First Amendment may be an applicable vehicle for addressing partisan gerrymandering claims, proposed that such an analysis should ask "whether political classifications were used to burden a group's representational rights." *Vieth*, 541 U.S. at 314–15, 124 S.Ct. 1769 (Kennedy, J., concurring in the judgment). The *Vieth* plurality rejected this proposal because "a First Amendment claim, if it were sustained, would render unlawful *all* consideration of political affiliation in districting, just as it renders unlawful *all* consideration of political affiliation in hiring for non-policy-level government jobs." *Id.* at 294, 124 S.Ct. 1769 (plurality op.). Common Cause Plaintiffs essentially agree, arguing that strict scrutiny is triggered once a plaintiff shows that a redistricting body intended for a plan to discriminate against a certain set of voters. (Common Cause Br. 5–8.) The majority adopts an intermediate scrutiny standard requiring the showing of a concrete burden to political speech or associational rights. (Maj. Op. at 162–63.) However, in practice, I find the result to be indistinguishable, for partisan consideration in a political process is an attempt to create some sort of political advantage for the supporters of a candidate or party. This advantage necessarily comes at the expense of or burden to the other.

As explained above, Congress has declined to expressly limit partisan gerrymandering by statute, *see* 2 U.S.C. § 2c, and the Court's cases accepting or tolerating some amount of partisan consideration are many, *see, e.g.*, *Cromartie*, 526 U.S. at 551, 119 S.Ct. 1545; *Miller*, 515 U.S. at 914, 115 S.Ct. 2475; *Gaffney*, 412 U.S. at 753, 93 S.Ct. 2321; *see also Harris*, —— U.S. ——, 137 S.Ct. at 1488 (Alito, J., concurring in the judgment in part and dissenting in part); *Whitford*, 218 F.Supp.3d at 934–35 (Griesbach, J., dissenting) (collecting cases). It might be desirable for a host of policy reasons to remove partisan considerations from the redistricting process. But I am unable to conclude that the First Amendment requires it, or that Plaintiffs here have proven violations of their speech or associational rights under the First Amendment.

III. Article I, Sections 2 and 4

I agree with the majority's conclusion that the 2016 Plan amounts to a successful attempt to dictate election outcomes. I join in the majority's opinion as to Article I, Sections 2 and 4 to the extent consistent with the discussion above. [43] I specifically join in the analysis and holding in Part V.B.3. I differ slightly from the majority in that I do not find that the Elections Clause completely prohibits State legislatures from disfavoring a particular party. *See Brown v. Sec'y of State of Fla.*, 668 F.3d 1271, 1284 & n.10 (11th Cir. 2012) (rejecting the prohibition of all regulations influencing election outcomes and instead reading the cases as prohibiting States from attempting "to prevent or severely cripple the election of particular candidates").

***81** "[T]he people should choose whom they please to govern them." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1995) (quoting *Powell v. McCormack*, 395 U.S. 486, 547, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)). In this case, the legislature, not the people, dictated the outcome when the districts were drawn, and Defendants have presented no specific facts to support a finding that the election results were due to anything other than the maps being drawn

to reach a specific result. General suggestions of other factors possibly contributing to the election results such as fundraising disparities, voter turnout, the quality of the candidates, and unforeseen candidate circumstances, (*see, e.g.*, Legislative Defs.' Post–Trial Br. 10–11, Nov. 6, 2017, ECF No. 115; Leg. Defs.' Proposed Findings of Fact and Conclusions of Law 67, Nov. 6, 2017, ECF No. 114), are insufficient to establish that something other than partisan consideration dictated the election results across the State.

IV. Remedy

I agree that the General Assembly is entitled to a second opportunity to draw a constitutional congressional districting plan. As noted in both the majority opinion and this opinion, the adjudication of partisan gerrymandering claims against a redistricting plan is a developing area of law, and the General Assembly should have the opportunity to remedy its plan under the standards set forth in the majority opinion. While there is merit to the majority's procedure in identifying a Special Master at this juncture, I would not appoint a Special Master prior to the General Assembly's unsatisfactory enactment of a remedial plan. I am not convinced any duties exist at this time for which an appointment is appropriate, nor do I believe there is an exceptional condition or any post-trial matter yet presented which cannot be effectively and timely addressed by the court. *See* Fed. R. Civ. P. 53.

All Citations

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Footnotes

1 Senator Robert Rucho, in his official capacity as co-chair of the Joint Select Committee on Congressional Redistricting (the "Committee"); Representative David Lewis, in his official capacity as co-chair of the Committee; Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives; and Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate.

2 This opinion constitutes our findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a)(1).

3 Under the North Carolina Constitution, the Governor lacks the authority to veto redistricting legislation. *See* N.C. Const. art. II, § 22.

4 During a Senate Redistricting Committee meeting on February 18, 2017, the 2016 Plan was slightly modified by moving two whole precincts and one partial precinct between Districts 6 and 13 to avoid double-bunking two incumbents. Ex. 1009, at 53:2–54:14; Ex. 1014, at 22:21–23:10; Lewis Dep. 138:6–139:2.

5 The individual plaintiffs in the Common Cause action are Larry D. Hall; Douglas Berger; Cheryl Lee Taft; Richard Taft; Alice L. Bordsen; William H. Freeman; Melzer A. Morgan, Jr.; Cynthia S. Boylan; Coy E. Brewer, Jr.; John Morrison McNeill; Robert Warren Wolf; Jones P. Byrd; John W. Gresham; and Russell G. Walker, Jr.

6 The individual plaintiffs in the League action are William Collins, Elliott Feldman; Carol Faulkner Fox; Annette Love; Maria Palmer; Gunther Peck; Ersla Phelps; John Quinn, III; Aaron Sarver; Janie Smith Sumpter; Elizabeth Torres Evans; and Willis Williams.

7 Plaintiffs in underpopulated districts lack standing to challenge a districting plan on one-person, one-vote grounds. *See, e.g.*, *Fairley v. Patterson*, 493 F.2d 598, 603–04 (5th Cir. 1974).

8 Legislative Defendants also argue that the Supreme Court's splintered opinions in *Vieth v. Jubelirer*, 541 U.S. 267, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004), foreclose statewide standing in *all* partisan gerrymandering cases. Leg. Defs.' FOF 111. A plurality in *Vieth* determined that partisan gerrymandering claims were not justiciable and therefore would have dismissed the suit on that ground. 541 U.S. at 305–06, 124 S.Ct. 1769 (plurality op.). In a separate, dissenting opinion, Justice Stevens explained that the specific type of statewide injury the *Vieth* plaintiffs alleged—namely, that "the number of Democratic representatives was not commensurate with the number of Democratic voters throughout" the state—"require[d] dismissal of the statewide claims." *Id.* at 327–28, 124 S.Ct. 1769 (Stevens, J., dissenting). The plurality read this aspect of Justice Stevens's disposition to establish that "statewide claims are nonjusticiable." *Id.* at 292, 124 S.Ct. 1769 (plurality op.). And it is the plurality's language on which Legislative Defendants here rely.
However, Justice Stevens expressly limited his statewide standing determination, stating that "[g]iven the Court's illogical disposition of this case, however, in future cases I would feel free to reexamine the standing issue. I surely would not suggest that a plaintiff would never have standing to litigate a statewide claim." *Id.* at 327, 124 S.Ct. 1769 n.16 (Stevens, J., dissenting). Therefore, regardless of how the *Vieth* plurality characterized Justice Stevens's vote in the case, Justice

Stevens at minimum recognized that statewide standing might be appropriate in cases addressing an injury analytically distinct from that which the *Vieth* plaintiffs suffered. This is such a case.

Plaintiffs in the present case do not merely allege harm stemming from a congressional delegation whose partisan makeup does not reflect that of the state as a whole. Plaintiffs testified to a statewide chilling of association and discourse between Democrats and Republicans—both within each party and across party lines—due to the lack of competitive districts. *See, e.g.*, Dep. of Faulkner Fox ("Fox Dep.") 29:21–30:21, 51:18–52:9, March 22, 2017, ECF No. 101–4; Dep. of Maria Palmer ("Palmer Dep.") 27:19–28:11, March 22, 2017, ECF No. 101–13; Dep. of Coy E. Brewer, Jr. ("Brewer Dep.") 24:7–25:6, April 18, 2017, ECF No. 101–18, 110–8. This drove down voter registration, voter turnout, and cross-party political discussion and compromise. Furthermore, the disfavored political party suffered from statewide decreases in fundraising and candidate recruitment, while at the same time incurring increased statewide costs for voter education and recruitment. *E.g.*, 30(B)(6) Dep. of N.C. Dem. Party by George Wayne Goodwin ("Goodwin Dep.") 97:18–98:9, April 17, 2017, ECF Nos. 101–30, 110–7; 30(B)(6) Dep. of the League of Women Voters of N.C. by Mary Trotter Klenz ("Klenz Dep.") 59:7–60:25, 80:1–81:7, April 4, 2017, ECF No. 101–28.

Moreover, Plaintiffs have asserted claims for relief that the Supreme Court has not previously addressed. *Compare Vieth v. Pennsylvania*, 241 F.Supp.2d 478, 482–83 (M.D. Pa. 2003) (holding only that districting did "not violate the principle of one person-one vote" under Article I, § 2, nor did it constitute "partisan gerrymandering ... violat[ing] the Equal Protection Clause"), *aff'd sub nom. Vieth v. Jubelirer*, 541 U.S. 267, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004), *with* Common Cause Compl. 17–25 (alleging violations of First Amendment rights, Article I, § 2 claim *not* grounded in one-person one-vote, and Article I § 4 claim), *and* League Compl. 25 (alleging "Violation of the First Amendment Right to Freedom of Speech and Association"). At the very least, then, these distinct claims are not barred by Justice Stevens's *Vieth* analysis.

9 Although we conclude that Plaintiffs may assert their partisan gerrymandering claims on a statewide basis, Plaintiffs' standing to challenge the plan as a whole does not rest on that conclusion. In particular, individual Plaintiffs have suffered cognizable injuries-in-fact and reside in each of the congressional districts included in 2016 Plan. *See infra* Part II.A.2. Plaintiffs, therefore, have standing to assert district-by-district challenges to the Plan as a whole.

10 Legislative Defendants further argue that the remaining Plaintiffs live in "competitive" districts, barring a finding that the 2016 Plan precluded such Plaintiffs from electing the candidate of their choice. Leg. Defs.' FOF 117–19. As detailed below, even under the criteria on which Legislative Defendants' political science expert relied, all of the districts in the 2016 Plan are "safe" districts, *see infra* Part III.B.2.a, and therefore are not, as a matter of fact, "competitive" districts. Accordingly, we reject Legislative Defendants' competitive districts argument.

11 Accordingly, the organizational Plaintiffs have standing through their members. "An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc.*, 528 U.S. 167, 181, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). Our prior analysis establishes that the organizations' relevant members have standing to sue, and there is no question that the interests here fit squarely within each organization's purpose; the claims do not "require[ ] individualized proof and both are thus properly resolved in a group context;" and relief "will inure to the benefit of those members of the association actually injured." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343–44, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977).

12 In *Baker*, the Court concluded that a majority of the *Colegrove* Court did not dismiss the action on justiciability grounds. *Baker*, 369 U.S. at 234–35, 82 S.Ct. 691.

13 A separate three-judge panel of this Court concluded that the General Assembly unjustifiably, and therefore unconstitutionally, relied on race in drawing lines surrounding twenty-eight districts in North Carolina's 2011 state legislative redistricting plan—among the largest racial gerrymanders ever confronted by a federal court. *See Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016). The Supreme Court summarily affirmed that decision without dissent. *North Carolina v. Covington*, —— U.S. ——, 137 S.Ct. 2211, 198 L.Ed.2d 655 (2017) (mem.). The *Covington* panel has since expressed "serious" concerns that several districts drawn by the General Assembly to remedy the constitutional violation either perpetuate the racial gerrymander or are otherwise legally unacceptable. Order, *North Carolina v. Covington*, No. 1:15–cv–399 (M.D.N.C. Oct. 26, 2017), ECF No. 202. The legislature elected under the racially gerrymandered 2011 districting plan has enacted a number of pieces of voting– and election-related legislation that have been struck down by state and federal courts as unconstitutional or violative of federal law. *See N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 214–15 (4th Cir. 2016), *cert. denied*, —— U.S. ——, 137 S.Ct. 1399, 198 L.Ed.2d 220 (2017) (mem.); *Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elections*, 827 F.3d 333, 352 (4th Cir. 2016); *City of Greensboro v. Guilford Cty. Bd. of Elections*, 251 F.Supp.3d 935, 939–40 (M.D.N.C. 2017); *Cooper v. Berger*, No.

16–cvs–15636 (Wake Cty. Super. Ct. Mar. 17, 2017) (three-judge panel) (striking down portions of two statutes, which stripped the recently elected Democratic Governor of a broad variety of powers, including powers related to supervision of State Board of Elections, on separation-of-powers grounds).

14 We further note that a majority of the Supreme Court has *never* found that a claim raised a nonjusticiable political question solely due to the alleged absence of a judicially manageable standard for adjudicating the claim. Rather, in each case in which the Supreme Court has found a claim nonjusticiable under the political doctrine, the Court has principally pointed to a textual commitment of the challenged action to a political branch in finding the claim nonjusticiable. *See, e.g.*, *Nixon v. United States*, 506 U.S. 224, 228–36, 113 S.Ct. 732, 122 L.Ed.2d 1 (1993) (holding that challenge to the procedure Senate adopted for "try[ing]" impeachment, U.S. Const. art. I, § 3, cl. 6, raised nonjusticiable political question); *Gilligan v. Morgan*, 413 U.S. 1, 10, 93 S.Ct. 2440, 37 L.Ed.2d 407 (1973) (holding that claim premised on the "organizing, arming, and disciplining" of members of the National Guard involved issue "committed expressly to the political branches of government"). In *Vieth*, Justice Kennedy's controlling opinion explained why the Court has declined to rely on an alleged lack of judicial manageable standards as a basis for finding a claim nonjusticiable:

> Relying on the distinction between a claim having or not having a workable standard ... involves a difficult proof: proof of a categorical negative [—] proof that no standard could exist. This is a difficult proposition to establish, for proving a negative is a challenge in any context.

Vieth, 541 U.S. at 311, 124 S.Ct. 1769 (Kennedy, J., concurring). Legislative Defendants have failed to provide any "proof that no standard could exist" for evaluating a partisan gerrymandering claim. Accordingly, we decline Legislative Defendants' request that we take the unprecedented step of dismissing a claim under the political question doctrine solely due to an alleged lack of judicially manageable standards for resolving the claim.

15 For this reason, Legislative Defendants misplace reliance on the Supreme Court's decision in *Easley*. Leg. Defs.' Br. 6. Unlike the 2016 Plan, which was drawn by a Republican-controlled General Assembly to disfavor supporters of Democratic candidates, *see supra* Part I.B; *infra* Part III.A.2, the districting plan at issue in *Easley* was drawn by a politically divided General Assembly to "fairly allocate political power to the parties in accordance with their voting strength," *Gaffney*, 412 U.S. at 754, 93 S.Ct. 2321; *see also Cromartie*, 133 F.Supp.2d at 412–13; *id.* at 423–24 (Thornburg, J. dissenting). Accordingly, the districting plan at issue in *Easley* advanced a recognized legitimate districting objective.

16 The Supreme Court has recognized one exception to this rule: to prove a *racial* gerrymandering claim, a plaintiff must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller v. Johnson*, 515 U.S. 900, 916, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995). As explained above, the Supreme Court and Congress have recognized that redistricting bodies can—and, in certain circumstances, should—consider race in drawing district lines. *See supra* Part II.A.1. By contrast, the Supreme Court never has recognized *any* legitimate constitutional, democratic, or public interest advanced by a state redistricting body's effort to subordinate the interests of supporters of one political party and entrench a rival party in power. *See id.* That race-conscious districting can, in appropriate circumstances, advance legitimate state interests and that partisan gerrymandering advances no such interests further suggests the Supreme Court would not extend the "predominance" exception applied in racial gerrymandering cases to partisan gerrymandering cases.

17 Dr. Mattingly testified that the Markov chain Monte Carlo algorithm was developed as part of the Manhattan Project and is widely used for a variety of purposes, including drug development, weather forecasting, and machine learning. Trial Tr. I, at 41:4–8.

18 To ensure the choice of initial districting plan did not impact his results, Dr. Mattingly conducted his analysis using three different initial plans: (1) the 2011 Plan, (2) the 2016 Plan, and (3) a plan drawn by a bipartisan group of retired North Carolina judges who served as a simulated nonpartisan districting commission. Ex. 3004, at 27; Trial Tr. I, at 87:5–88:11. Dr. Mattingly found that the choice of initial plan did not impact his principal findings. Ex. 3004, at 27; Trial Tr. I, at 87:5–88:11.

19 Dr. Mattingly's algorithm ensured compliance with the Voting Rights Act by requiring that any simulated plan included in the final ensemble include one district with a black voting-age population ("BVAP") of at least 40 percent and a second district with a BVAP of at least 33.5 percent. Trial Tr. I, at 41:23–25. Dr. Mattingly chose those thresholds because they were comparable to the BVAP percentages in the two highest BVAP districts in the 2016 Plan. *Id.* at 42:2–11.

20 To test the robustness of his results to changes in his exclusion criteria, Dr. Mattingly re-ran his analyses using an ensemble of more than 119,000 simulated maps. Ex. 3040, at 31–32. The partisanship results he obtained using the larger ensemble mirrored those obtained using the smaller ensemble. *Id.*; Trial Tr. I, at 77:20–79:15.

21 Dr. Mattingly reasonably excluded the results from the 2014 election because one of the candidates in that election ran unopposed, meaning that there were no votes in that district from a contested election to use in performing his analysis. Ex. 3002, at 23. Legislative Defendants took no issue with this methodological choice.

22 At trial, Common Cause Plaintiffs asked Dr. Mattingly to testify to the results of several additional sensitivity and robustness analyses he performed, all of which confirmed his principal findings. Trial Tr. I, at 139:19–141:12. Legislative Defendants objected to those analyses on grounds that they had not been disclosed prior to trial. Trial Tr. I, at 139:7–9. We sustain Legislative Defendants' objection, *see* Fed. R. Civ. P. 26(a)(2)(B), 26(e)(1)(A), and therefore do not consider that evidence.

23 To draw a random sample of simulated plans, Dr. Chen's algorithm builds each simulated plan by randomly selecting a VTD and then "building outward" from that VTD, in accordance with the governing criteria, "by adding adjacent VTDs until you construct an entire first district." Trial Tr. I, at 163:19–25.

24 Prior to trial, League Plaintiffs moved to exclude Mr. Trende's report and testimony under Federal Rule of Evidence 702 and *Daubert*. League of Women Voters Pls.' Mot. in Limine To Exclude the Testimony of Sean P. Trende at Trial, June 16, 2017, ECF No. 702. This Court's Final Pretrial Order denied the motion, without prejudice to League Plaintiffs asserting a similar objection at trial. Final Pretrial Order, Oct. 4, 2017, ECF No. 90. League Plaintiffs renewed their motion to exclude Mr. Trende's testimony at trial. Trial Tr. III, at 19:20–22. This Court took League Plaintiffs' objection under advisement and allowed Mr. Trende to testify. *Id.* at 30:2–21. We conclude that Mr. Trende's training and experience render him qualified to provide expert testimony regarding congressional elections, electoral history, and redistricting, and therefore overrule League Plaintiffs' objection.

25 "Wasted" votes is a term of art used by political scientists, and is not intended to convey that any vote is in fact "wasted" as that term is used colloquially.

26 The efficiency gap measure takes on a different sign depending on whether it favors one party or the other. Rather than denoting the sign of each calculated efficiency gap, this opinion reports the absolute value, or magnitude, of the efficiency gap.

27 Dr. Jackman's database included results from only 25 states because he excluded elections both in states with six or fewer representatives at the time of the election and in Louisiana due to its unique run-off election system. Ex. 4002, at 18–19 According to Dr. Jackman, when a state has six or fewer representatives the efficiency gap varies substantially with the shift of a single seat, thus making it a less useful metric in those states. *Id.* Legislative Defendants do not take issue with this methodological choice.

28 Approximately 14 percent of the districts included in Dr. Jackman's 512–election database had elections that did not include candidates from both parties. Ex. 4002, at 20–26. Rather than excluding districts with uncontested elections from his database, Dr. Jackman "imputed" (or predicted) Democratic and Republican vote shares in those elections in two ways: (1) using presidential vote shares in the districts and incumbency status and (2) using results from previous and subsequent contested elections in the district and incumbency status. *Id.* at 24–26. Because calculating an efficiency gap requires predicting both vote shares *and* turnout, Dr. Jackman also predicted turnout using turnout data from contested congressional elections, usually contested elections under the same districting plan. *Id.* Importantly, Dr. Jackman reported measures of statistical significance reflecting error rates associated with the imputed vote shares and turnout, and his conclusions regarding the partisan performance of the 2016 Plan accounted for those measures of statistical significance. *See, e.g.*, *id.* at 41–48. Although Legislative Defendants assert that the imputation requirement complicates the efficiency gap analysis, they do not challenge Dr. Jackman's methodology for imputing the vote shares and turnout in the uncontested elections, nor do they take issue with his results. Leg. Defs.' FOF 64. Accordingly, we find that Dr. Jackman's imputation of vote shares and turnout in uncontested elections does not impact the validity and probative force of his results.

29 Dr. Jackman identified a lower threshold of 5 percent for states with congressional delegations with 15 members or more. Ex. 4002, at 39–41.

30 In *Whitford*, Dr. Jackman used the "simplified method" for calculating the efficiency gap, which assumes equal voter turnout at the district level and that for each "1% of the vote a party obtains above 50%, the party would be expected to earn 2% more of the seats." 218 F.Supp.3d at 855 n.88, 904. Although it accepted Dr. Jackman's analysis, the *Whitford* Court expressed a preference for the "full method" of calculating the efficiency gap because that method does not rely on assumptions about voter turnout and the votes-to-seats ratio. *Id.* at 907–08. Dr. Jackman calculated the 2016 Plan's efficiency gap, as well as the efficiency gaps observed in his 512–election database, using the "full method," and therefore his analysis does not rest on the assumptions about which the *Whitford* court expressed concern. We decline to criticize Dr. Jackman for changing his analysis to the methodology the *Whitford* court found most reliable and informative.

31 At trial, League Plaintiffs sought to adduce additional evidence of legislators' ability to use the efficiency gap prospectively by asking Dr. Jackman about a report purportedly prepared by a North Carolina state legislator calculating the efficiency gap for a proposed state legislative districting plan. Trial Tr. II, at 136:24–137:7. Legislative Defendants objected to the question on hearsay grounds. *Id.* at 137:10–13. Having taken the objection under advisement at trial, we now sustain that objection.

32 In comparing the 2016 Plan's partisan bias with that exhibited in elections in other states, Dr. Jackman excluded what he characterized as "uncompetitive elections"—elections in which the two parties' statewide vote shares were not closer than the range of 55 percent to 45 percent. Ex. 4003, at 4–5. Accordingly, Dr. Jackman had fewer comparators for his partisan bias estimate than for his efficiency gap estimate. Dr. Jackman explained that he excluded uncompetitive elections because partisan bias is a less reliable measure of partisan asymmetry in such elections. *Id.* at 5. Legislative Defendants take no issue with that methodological decision. North Carolina's 2016 statewide congressional vote was within the 55%-to–45% range, and therefore, under Dr. Jackman's unrebutted opinion, partisan bias provides reliable evidence of the 2016 Plan's partisan asymmetry in 2016.

33 *Whitford* expressly declined to determine whether, at the justification inquiry, the burden shifts to the governmental defendant to prove that a districting plan's discriminatory partisan effects were attributable to a legitimate state interest. 218 F.Supp.3d at 911. As explained above, the burden-shifting approach taken by the Supreme Court in analogous Equal Protection cases counsels in favor of placing the burden on Legislative Defendants. And unlike the defendants in *Whitford*, who expressly argued that the burden on the justification prong rested with the plaintiffs, *Whitford v. Nichol*, 180 F.Supp.3d 583, 599 (W.D. Wis. 2016) (summary judgment order), Legislative Defendants have not argued that Plaintiffs have the burden to prove that 2016 Plan's discriminatory partisan effects were not justified by a legitimate state interests. Nevertheless, we find that even if the burden lies with Plaintiffs, Plaintiffs have propounded sufficient evidence of the 2016 Plan's lack of justification to meet such a burden.

34 According to Dr. Hood, the term "blackbelt" refers to North Carolina's "Coastal Plain" region, which encompasses a large population of African–American voters. *See* Ex. 5058, at 10 n.16. Dr. Hood's characterization of the "blackbelt" as a distinct political subregion derives from a 1949 academic analysis of North Carolina's political subregions. V.O. Key, Jr., *Southern Politics in State and Nation* (Alfred A. Knopf 1949). Dr. Hood did not directly testify as to whether that analysis, which is nearly seventy years old and predates the civil rights movement, continues to accurately reflect North Carolina's political geography.

35 Although the Supreme Court has recognized that a redistricting body generally has a legitimate interest in avoiding the pairing of incumbents, the Supreme Court has not addressed whether, and by what means, a state redistricting body directed to draw remedial districts may protect incumbents elected in unconstitutional districts. *Easley v. Cromartie*, 532 U.S. 234, 262 n.3, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001) (Thomas, J., dissenting) (noting that that question was not presented to the Supreme Court or district court and, therefore, that the Court had not addressed it). Four Justices, however, have stated that whether "the goal of protecting incumbents is legitimate, even where, as here, individuals are incumbents by virtue of their election in an unconstitutional racially gerrymandered district ... is a questionable proposition." *Id.* The Justices' skepticism regarding the use of incumbency in the remedial context accords with the Supreme Court's admonition that remedial plans should not "validate the very maneuvers that were a major cause of the unconstitutional districting." *Abrams v. Johnson*, 521 U.S. 74, 86, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997). Lower courts likewise have expressed concern about the use of incumbency in the remedial context. *See Ketchum v. Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984) (expressing skepticism about efforts to protect incumbents in maps drawn to remedy impermissible race-based districting because "many devices employed to preserve incumbencies are necessarily racially discriminatory"); *Jeffers v. Clinton*, 756 F.Supp. 1195, 1199–1200 (E.D. Ark. 1990) (rejecting remedial districts that violated Voting Rights Act, notwithstanding that the districts were designed to protect incumbents, because "[t]he desire to protect incumbents, either from running against each other or from a difficult race against a black challenger, cannot prevail if the result is to perpetuate violations of the equal-opportunity principle contained in the Voting Rights Act").

> The General Assembly drew the 2016 Plan after the 2011 Plan was found to be an unconstitutional racial gerrymander. *See supra* Part II.A. Accordingly, whether the General Assembly had a legitimate interest in protecting incumbents elected under the 2011 Plan remains uncertain, particularly with regard to those incumbents elected in the unconstitutional districts and districts adjoining the unconstitutional districts.

36 *See also Shapiro v. McManus*, —— U.S. ——, 136 S.Ct. 450, 456, 193 L.Ed.2d 279 (2015) (noting that a First Amendment claim of impermissible partisan gerrymandering articulates "a legal theory put forward by a Justice of this Court and uncontradicted by the majority in any of our cases").

37 We need not definitively resolve this question because we find (1) that the General Assembly intended for the 2016 Plan to subordinate the interests of non-Republican voters and entrench Republican congressmen in office, (2) that the 2016 Plan had that effect, and (3) that no legitimate state interest or neutral explanation justified the 2016 Plan's discriminatory effect. *See supra* Part III; *infra* Part IV.B. Accordingly, under either League Plaintiffs and Legislative Defendants' three-prong framework or Common Cause Plaintiffs' strict-scrutiny approach, Plaintiffs prevail on their First Amendment claims.

38 For this reason, Legislative Defendants' characterization of congressional redistricting as a "core sovereign function," Leg. Defs.' Br. 2, incorrectly states the law.

39 In North Carolina, redistricting is conducted by the General Assembly, a partisan body, consistent with the Constitution. As Chief Justice Roberts explains:

> States have "broad powers to determine the conditions under which the right of suffrage may be exercised." *Carrington v. Rash*, 380 U.S. 89, 91, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965) (internal quotation marks omitted); *see also Arizona*, *ante*, at [——] U.S. [——], 133 S.Ct. at 2257–59. And "[e]ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen." *Boyd v. Nebraska ex rel. Thayer*, 143 U.S. 135, 161, 12 S.Ct. 375, 36 L.Ed. 103 (1892). Drawing lines for congressional districts is likewise "primarily the duty and responsibility of the State." *Perry v. Perez*, 565 U.S. [388], ——, 132 S.Ct. 934, 940, 181 L.Ed.2d 900 (2012) (per curiam) (internal quotation marks omitted).

Shelby County v. Holder, 570 U.S. 529, ——, 133 S.Ct. 2612, 2623, 186 L.Ed.2d 651 (2013).

40 In *Vieth*, the appellants' proposed predominant motivation test would have been satisfied when "partisan advantage was the predominant motivation behind the entire statewide plan." *Vieth*, 541 U.S. at 285, 124 S.Ct. 1769 (plurality op.) (emphasis removed). In rejecting that test, the *Vieth* plurality emphasized the difficulties in evaluating predominance on a statewide basis versus the district-by-district basis required for racial gerrymandering claims. *Id.* at 285, 124 S.Ct. 1769. Plaintiffs here challenge the 2016 Plan on both a statewide and district-by-district basis. In either evaluation, I find that Plaintiffs have proven that partisan considerations predominated.

41 As we recognized, "the splintered opinions in *Bandemer* and *Vieth* stand for, at a minimum, [that] Fourteenth Amendment partisan gerrymandering claims are justiciable[.]" *Common Cause*, 240 F.Supp.3d at 387. But the justiciability (or nonjusticiability) of a claim under one legal theory does not necessitate the same result under another. *See Baker v. Carr*, 369 U.S. 186, 209–11, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). Although "nothing in the Court's splintered opinions in *Vieth* rendered nonjusticiable Plaintiffs' First Amendment claims[,]" *Common Cause*, 240 F.Supp.3d at 389, the Court has neither expressly ruled in this area, which remains unsettled at best.

42 It should also be noted that the "concept of a 'chilling effect' is associated with the doctrine of overbreadth, and describes the situation where persons whose expression is protected are deterred from exercising their rights by the existence of an overly broad statute regulating speech." *Kidd*, 2006 WL 1341302, at *18 n.12 (citation omitted); *see New York v. Ferber*, 458 U.S. 747, 772 & n.27, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982). While Plaintiffs and other citizens may feel a sense of disillusionment toward the political process due to the 2016 Plan, this differs from fear of enforcement due to an "overly broad statute regulating speech."

43 Both *Cook v. Gralike*, 531 U.S. 510, 121 S.Ct. 1029, 149 L.Ed.2d 44 (2001), and *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1995), dealt with objectively identifiable facts that dictated election outcomes: the candidate's stance was labeled on the ballot, or the candidate was not allowed on the ballot. Determining whether partisan considerations dictated the outcome of an election may necessarily require a more complex factual analysis.

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2018 WL 472142
Supreme Court of the United States

Robert A. RUCHO, et al., applicants,
v.
COOMON CAUSE, et al.

No. 17A745.
|
Jan. 18, 2018.

Synopsis
Case below, 279 F.Supp.3d 587.

Opinion
***1** The application for stay presented to THE CHIEF JUSTICE and by him referred to the Court is granted, and it is ordered that the order of the United States District Court for the Middle District of North Carolina, case Nos. 1:16–CV–1026 and 1:16–CV–1164, entered January 9, 2018, is stayed pending the timely filing and disposition of an appeal in this Court.

Justice GINSBURG and Justice SOTOMAYOR would deny the application for stay.

All Citations

--- S.Ct. ----, 2018 WL 472142 (Mem), 86 USLW 3367

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