

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROWN; WILLIAM TUNG;
ROSEANNE MILAZZO; BURT SIEGEL; SUSAN
CASSANELLI; LEE CASSANELLI; LYNN WACHMAN;
MICHAEL GUTTMAN; MAYA FONKEU; BRADY
HILL; MARY ELLEN BALCHUNIS; TOM DEWALL;
STEPHANIE MCNULTY; & JANET TEMIN,

v.

LEIGH M. CHAPMAN, in her official capacity as the
Acting Secretary of the Commonwealth of Pennsylvania;
JESSICA MATHIS, in her official capacity as Director for
the Pennsylvania Bureau of Election Services and Notaries,

5 MAP 2022

AND

PHILIP T. GRESSMAN; RON Y. DONAGI;
KRISTOPHER R. TAPP; PAMELA GORKIN; DAVID P.
MARSH; JAMES L. ROSENBERGER; AMY MYERS;
EUGENE BOMAN; GARY GORDON; LIZ MCMAHON,
TIMOTHY G. FEEMAN; & GARTH ISAAK,

v.

LEIGH M. CHAPMAN, in her capacity as Acting Secretary
of the Commonwealth of Pennsylvania; & JESSICA
MATHIS, in her capacity as Director for the Pennsylvania
Bureau of Election Services and Notaries,

6 MAP 2022

**Appeal of: Khalif Ali, Maryn Formley, Richard Rafferty, Patrick Beaty,
Susan Gobreski, Barbara Hill, Judy Hines, Jodi Greene, John Thompson,
Cynthia Alvarado, and Timothy L. Kauffman, Possible Intervenors**

BRIEF OF APPELLANTS

**Appeal From the Order of the Commonwealth Court of Pennsylvania, dated
January 14, 2022 in Consolidated Cases Nos. 464 MD 2021 and 465 MD 2021**

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I. STATEMENT OF JURISDICTION

This appeal arises out of pending litigation in the Commonwealth Court over the congressional district boundaries for the 2022 elections. These consolidated actions were filed on December 14, 2021, under the Commonwealth Court’s original jurisdiction, 42 Pa.C.S. § 761(a). Accordingly, this Court has exclusive jurisdiction over appeals arising out of the proceedings below. *See* 42 Pa.C.S. § 723(a); Pa.R.A.P. 1101(a)(1).

On December 17, 2021, the Commonwealth Court issued an order requiring any party seeking leave to intervene to file an intervention petition by December 31, 2021. The proposed intervenor-petitioners Khalif Ali, Maryn Formley, Richard Rafferty, Patrick Beaty, Susan Gobreski, Barbara Hill, Judy Hines, Jodi Greene, John Thompson, Cynthia Alvarado, and Timothy L. Kauffman (collectively, “Proposed Ali Intervenors” or “Appellants”) filed a timely petition seeking intervention on December 31, 2021. R. at 353a. By order dated January 14, 2022, the Honorable Judge Patricia A. McCullough of the Commonwealth Court denied the petition without providing any reason for doing so (the “Order”). R. at 558a.

This denial of intervention is ripe for review under the collateral order doctrine because “the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the

case, the claim will be irreparably lost.” Pa.R.A.P. 313. Appellants have been denied intervention as parties and relegated to amicus status. Under the Order, they will lack the opportunity to submit a responsive brief and expert report after the parties submit their proposals for a new congressional districting plan. Order ¶¶ 4-5. Nor will they have an opportunity to participate in the evidentiary hearing scheduled for January 27 and 28. Order ¶ 11. Appellants’ right to be heard on setting the boundaries for the new congressional districting plan, particularly with respect to the use of prison-adjusted data and importance of preserving communities of interest, is “too important to be denied review,” and that right will be “irreparably lost,” “if review is postponed until final judgment in the case.” Pa.R.A.P. 313(b). Under such circumstances, “a [trial] court’s order denying intervention is one type of order which must be [timely] appealed . . . under Rule of Appellate Procedure 903, or not at all, precisely because the failure to attain intervenor status forecloses a later appeal.” *In re Barnes Found.*, 871 A.2d 792, 794 (Pa. 2005).

II. ORDER OR OTHER DETERMINATION IN QUESTION

This appeal seeks review of Paragraph 5 of the January 14, 2022 Order:

The Applications for Leave to Intervene as parties filed by (i) Voters of the Commonwealth of Pennsylvania; (ii) Citizen-Voters; (iii) Draw the Lines-PA; and (iv) Khalif Ali et al. are **DENIED**.

Voters of the Commonwealth of Pennsylvania, Citizen-Voters, Draw the Lines-PA, and Khalif Ali et al., are permitted to

participate in these matters as Amicus Participants, which means that their participation shall be limited to submissions to the Court **in writing** as set forth in Paragraph 6 of this Order.

R. at 558a.

III. STATEMENT OF THE SCOPE OF REVIEW AND STANDARD OF REVIEW

Lower court decisions denying intervention are reviewed under the abuse of discretion standard. *Darlington v. Reilly*, 69 A.2d 84, 86 (Pa. 1949) (“[I]ntervention is a matter within the sound discretion of the court below and unless there is a manifest abuse of such discretion, its exercise will not be interfered with on review.”). An abuse of discretion is established upon a showing that the lower court’s decision demonstrates “manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.” *Commonwealth v. Dillon*, 925 A.2d 131, 136 (Pa. 2007).

IV. STATEMENT OF THE QUESTIONS INVOLVED

Did the Commonwealth Court err by denying Proposed Ali Intervenors’

Application for Leave to Intervene?

Suggested Answer: Yes.

V. STATEMENT OF THE CASE

A. Form of Action and Procedural History

On December 17, 2021, Carol Ann Carter, who avers that she is a registered voter from Bucks County, and a group of other petitioners (the “Carter

Petitioners”) filed an action in the Commonwealth Court, No. 464 MD 2021, against Veronica Degraffenreid, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania and Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries. R. at 306a (Petition for Review).¹ The Carter Petitioners aver that they are citizens of the United States, registered Pennsylvania voters, and residents of districts that are overpopulated relative to other districts in the Commonwealth. R. at 311a. The Carter Petitioners asked the Commonwealth Court to begin proceedings to draw a new congressional map in anticipation of the failure of the Legislature to enact a map in time for the upcoming primary elections on May 17, 2022. R. at 324a.

Also on December 17, 2021, Philip T. Gressman, a Professor of Mathematics at the University of Pennsylvania, and a group of academics filed a separate action in the Commonwealth Court, 465 MD 2021, against Acting Secretary Degraffenreid and Ms. Mathis in their official capacities. The petitioners in that action (the “Gressman Petitioners”) aver that they are leading professors of mathematics and other disciplines at various institutions across Pennsylvania. They asked for substantially the same relief as the Carter Petitioners – that the

¹ Leigh M. Chapman recently replaced Ms. Degraffenreid as Acting Secretary. R. at 562a. The Commonwealth Court has accordingly amended the caption in both cases. R. at 570a.

Commonwealth Court draw a congressional map for the 2022 primary and general elections. R. at 343a.

By order dated December 20, 2021, the Commonwealth Court consolidated the cases filed by the Carter and Gressman Petitioners. R. at 349a. By another order issued that same date, the Commonwealth Court ordered that any applications to intervene must be filed by December 31, 2021. R. at 351a.

On December 31, 2021, the Proposed Ali Intervenors timely filed an application for leave to intervene pursuant to Pennsylvania Rule of Appellate Procedure 1531(b) and Pennsylvania Rules of Civil Procedure 2327-2329. In response to the application, all parties filed timely responses; none opposed the petition. The Court held a hearing on the applications for leave to intervene on January 6, in which Proposed Ali Intervenors participated. By Order dated January 14, 2022, the Commonwealth Court denied Proposed Ali Intervenors' Application for Leave to Intervene, as well as those of three other groups of individual voters. In that same Order, the Commonwealth Court granted intervenor status to six other groups of people, all of whom are current elected officeholders. The Commonwealth Court provided no reasoning for its decision, nor did it indicate that a written opinion would be forthcoming. R. at 557a-559a.

B. Prior Determinations

The only prior determination in relation to intervention is the January 14 Order of the Commonwealth Court, which has not been reported.

On December 21, 2021, the Carter and Gressman Petitioners both filed petitions for extraordinary relief with this Court, requesting that the Court exercise extraordinary jurisdiction over the pending proceedings in the Commonwealth Court. This Court denied the petitions without prejudice on January 10, 2022.

C. Name of the Judge Whose Determination Is To Be Reviewed

The Order denying intervention was issued by the Honorable Patricia A. McCullough of the Commonwealth Court.

D. Chronological Statement of Facts

1. The Parties

Appellants are a group of Pennsylvania citizens who come from across the Commonwealth, belong to different political parties, have been active in voting rights issues and have deep concerns about gerrymandering, the application of redistricting practices to communities of interest, and in ensuring that prison-adjusted data is used in drawing congressional maps. As averred in the Proposed Ali Intervenors Petition for Intervention:

Proposed Intervenor Khalif Ali lives in Hazelwood neighborhood of Pittsburgh and has been a registered voter in Pennsylvania since 2001. Since

November of 2020, Mr. Ali has served as the Executive Director of Common Cause Pennsylvania, a nonpartisan nonprofit organization dedicated to upholding the core values of American democracy, including working to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. Common Cause Pennsylvania has approximately 35,000 members and supporters across the state, including members in every congressional district. R. at 357a.

Proposed Intervenor Maryn Formley is a resident of Allegheny County and has been a registered voter in Pennsylvania for approximately twenty-three years. Ms. Formley is the founder and executive Chair for the Voter Empowerment Education and Enrichment Movement (“VEEEM”), a non-profit organization dedicated to increasing voter turnout in Allegheny County. She understands that representation is the core of our democracy and works to educate and empower voters, particularly Black voters, to make their voices heard.

Proposed Intervenor Richard Rafferty is a voter in Lafayette Hill, Montgomery County and has voted in congressional primary and general elections there for some thirty years. After retiring as an IT Director five years ago, Mr. Rafferty joined Fair Districts PA as a volunteer. In 2019, he became the Montgomery County Local Lead for Fair Districts PA, and in that capacity, he

leads organizing and advocacy across the county in support of transparent, impartial, and fair redistricting. He has been disappointed in the General Assembly's lack of transparency and slow-footedness in carrying out the current congressional redistricting process. He believes that Montgomery County has frequently been a victim of poor redistricting practices, and he believes his community in Lafayette Hill and Montgomery County should be fully and fairly represented in any congressional districting plan. R. at 358a-359a.

Proposed Intervenor Patrick Beaty is a voter in Huntingdon Valley, Montgomery County. Mr. Beaty has been registered to vote in Pennsylvania since the 1970s. For the last five years, he has volunteered as the Legislative Director for Fair Districts PA, which is a nonpartisan, statewide coalition of organizations and individuals working to create a process for redistricting that is transparent, impartial, and fair. As a leader of Fair Districts PA, he has been heavily involved in the coalition's efforts to educate and mobilize Pennsylvanians around ending gerrymandering, and he has given testimony in both houses of the General Assembly regarding congressional redistricting. He believes his community in Huntingdon Valley and Montgomery County should be fully and fairly represented in any congressional districting plan. R. at 359a-369a.

Proposed Intervenor Susan Gobreski is a voter in Philadelphia and has voted consistently in congressional primary and general elections there for thirty-four

years. Ms. Gobreski currently serves on the Board of Directors for the League of Women Voters of Pennsylvania. As the League's Board Director for Government Policy, she works to protect voting rights. In that capacity she testified before the Pennsylvania House State Government Committee on Congressional Redistricting on October 19, 2021. There she advocated for a fair process and a fair outcome including that the congressional map follow the imperatives stated in the Pennsylvania Constitution. R. at 360a.

Proposed Intervenor Barbara Hill is a voter in Stroudsburg, Monroe County. For over fifty years, Ms. Hill has been a registered voter and regularly votes in congressional primary and general elections. For the last seven years, Ms. Hill has been a registered Pennsylvania voter in Monroe County and has regularly voted in primary and general elections there. Ms. Hill has been a member of the League of Women Voters for decades, joining chapters of the League wherever she lived. Ms. Hill is a Board Vice President for Monroe County Habitat for Humanity and is particularly concerned that Latino, Black, and Asian communities of interest be respected in redistricting. R. at 360a-361a.

Proposed Intervenor Judy Hines is a resident of Mercer in Mercer County. She has been a registered voter in Pennsylvania for 54 years. Ms. Hines is an active member of the League of Women Voters of Mercer County, where she has regularly participated in advocating for a more fair and representative

congressional redistricting process. She also has served as the membership chair of the Mercer County NAACP and has been active in political campaigns. Ms. Hines also serves her community by participating in Mercer Area Library Summer Programs and packing and distributing food to members of the community in need. R. at 361a.

Proposed Intervenor Jodi Greene is a resident of Birdsboro in Berks County and has been continuously registered to vote for 26 years. Ms. Greene is a professor of history at Reading Area Community College and is active in her community, including serving as President of the League of Women Voters of Berks County for a year. She has regularly advocated for a fair, representative and transparent redistricting process, including organizing in Berks County to ensure residents understand the impact of redistricting on their daily lives. R. at 362a.

Proposed Intervenor John Thompson is a lifelong Philadelphian. From 1980 to 2016, Mr. Thompson was incarcerated in a series of Pennsylvania State Correctional Institutions, most recently in SCI Smithfield. Immediately upon his release from prison in 2016, Mr. Thompson returned home to Philadelphia and registered to vote. He consistently votes in congressional primary and general elections and plans to do so again in 2022. Since 2020, Mr. Thompson has been employed as a social and political organizer with the Abolitionist Law Center, primarily working and advocating to eliminate death by incarceration, solitary

confinement, and the release of all aging and geriatric prisoners. He is heavily involved in his community in the Lawncrest neighborhood and across the City of Philadelphia, and he believes his community should be fully and fairly represented in any congressional districting plan. R. 361a-362a.

Proposed Intervenor Cynthia Alvarado grew up in and still lives in Philadelphia. From 2008 to 2020, Ms. Alvarado was incarcerated in the State Correctional Institution at Muncy, in Lycoming County, where she had no community ties outside the prison's walls. As a young person growing up in the deeply impoverished Badlands section of Philadelphia, Ms. Alvarado felt politically disempowered and did not vote or engage in electoral politics. But during her time in prison, she had a political awakening, and she is now an outspoken member of her community, promoting criminal-justice reform at the federal, state, and local levels. She recently registered to vote for the first time in her life and looks forward to voting in the 2022 congressional primary and general elections. Based on her experience with political organizing among current and recently released prisoners, she is particularly concerned that counting prisoners as residents of their prisons, which are typically far from their home communities, discourages them from civic involvement after their release. She believes the Badlands and all of Philadelphia should be fully and fairly represented in any congressional districting plan.

Proposed Intervenor Timothy L. Kauffman was born in Lancaster City and graduated from JP McCaskey High School. He attended Gettysburg College and joined the Reserve Officer Training Corps in 1968. Dr. Kauffman served in the United States Army Reserves for thirty-nine years, during which time he regularly encouraged his military associates to register and vote. He currently resides in Manheim Township in Lancaster County. He is a registered voter in Pennsylvania and has regularly voted in congressional primary and general elections and plans to do so again in 2022. Dr. Kauffman is active in his community, including serving on several community boards as well as regularly participating in activism around democracy and environmental issues.

2. Proceedings Below

The Commonwealth Court held a hearing on January 6, 2022, to consider ten intervention petitions, six from elected officials and four from independent petitioner groups. On January 14, the court denied the petitions of the independent petitioners and granted the petitions of the elected officials. No basis was provided for the disparate treatment.

Also in the January 14 Order, the Commonwealth Court set out the procedure for the resolution of pending petitions for relief. Original parties and permitted intervenors are granted leave to file up to two maps on January 24, 2022, with supporting expert reports, as well as leave to comment on the submissions of

others by January 26, 2022. A hearing was set for January 27-28, 2022, at which only original parties and the permitted intervenors will be permitted to participate. The Proposed Ali Intervenors were relegated to amicus status, and as amici may submit a single map and an expert report but are not permitted to comment on the maps of others or to participate in the upcoming hearing in any way.

E. Statement of the Order Under Review

The order under review is the January 14, 2022 Order denying the Proposed Ali Intervenors' Petition to Intervene.

VI. SUMMARY OF ARGUMENT

Appellants are Pennsylvania voters who have demonstrated a longstanding commitment to free and equal elections. They sought leave below to intervene to assert the fundamental importance of neutral, nonpartisan standards for congressional redistricting. Those principles have often been violated by politicians who have drawn the maps with an eye on political expediency, and as a result, Pennsylvania has a troubling recent history of enacting unconstitutional congressional districting plans. As this Court held, following the 2010 Census, Pennsylvania enacted a congressional plan that “subordinate[d] the traditional redistricting criteria in service of achieving unfair partisan advantage, and, thus, violate[d] the Free and Equal Elections Clause of the Pennsylvania Constitution.”

League of Women Voters of Pa. v. Commonwealth (LWV-PA), 178 A.3d 737, 821 (Pa. 2018).

Appellants' organizations were instrumental in the *League of Women Voters* case and in acting as independent watchdogs in the name of the public interest. Silencing leaders of Pennsylvania-based public interest groups in this latest round of litigation, while allowing elected officials to dominate the discussion, is wrong in principle and will lead to the creation of an incomplete record for this Court's ultimate review. The burden in the Commonwealth Court of allowing Appellants to participate in the proceedings is minimal, and the lower court's failure to even provide a justification for the denial of intervention is itself an abuse of discretion.

Appellants should be accorded a full opportunity to present their unique perspective, which centers on ensuring that the following four principles are observed in the mapmaking process:

1. A districting plan should not "subordinate . . . the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts. . . . in whole or in part, to . . . gerrymandering for unfair partisan political advantage." *LWV-PA*, 178 A.3d 737, 817 (Pa. 2018).

2. A districting plan that meets those neutral criteria should also seek to preserve communities of interest. As the Court observed in *LWV-PA*: "When an

individual is grouped with other members of his or her community in a congressional district for purposes of voting, the commonality of the interests shared with the other voters in the community increases the ability of the individual to elect a congressional representative for the district who reflects his or her personal preferences. This approach inures to no political party's benefit or detriment. It simply achieves the constitutional goal of fair and equal elections for all of our Commonwealth's voters." *Id.* at 816. How to align that principle with the neutral redistricting principles is not a simple matter and is highly dependent on the facts. There is no party in the current proceedings who speaks directly for these communities of interest.

3. Under the Pennsylvania Constitution, drawing a congressional map to benefit or disadvantage any particular candidates or possible candidates—incumbents and challengers alike—is no more acceptable than drawing it in order to give one party an unfair partisan political advantage.

4. To be compliant with Pennsylvania constitutional and statutory law, a congressional districting plan must treat prisoners as residents of their homes, not their cells. This latter principle has been adopted by the Legislative Reapportionment Commission (LRC), but is not, to Appellants' knowledge, being honored by any parties in this litigation. The LRC has made two sets of census data available for use in redistricting – one that allocates prisoners to their homes

and another that allocates them to their place of incarceration. There is no party in the present litigation to speak for this constituency.

Finally, Appellants hope to intervene and argue for a transparent and objective process that includes preannounced criteria, the release of one or more draft maps, and opportunity for public input and comment before a final map is adopted. Both the Commonwealth Court and the integrity of the process would benefit from Appellants' participation. The decision to deny intervention should be reversed.

VII. ARGUMENT FOR APPELLANTS

A. The Commonwealth Court Abused Its Discretion In Denying The Petition To Intervene

A party is entitled to intervene in a pending action if it “could have joined as an original party in the action or could have been joined therein” or “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa.R.C.P. 2327(3)-(4). An application to intervene may be refused only if “(1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or (2) the interest of the petitioner is already adequately represented; or (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa.R.C.P. 2329. Because the

Appellants satisfied the requirements of two of the subsections of Pa.R.C.P. 2327, namely Rules 2327(3) and 2327(4), and there is no basis to deny intervention under Rule 2329, the Commonwealth Court abuse its discretion in failing to permit intervention.

1. The Proposed Ali Intervenors Met the Requirements of Pa.R.C.P. 2327 to Intervene

Appellants meet the requirements of Pa.R.C.P. 2327(3) and (4), either of which would have been sufficient to support intervention.

Rule 2327(3) directs that an applicant “shall be permitted to intervene . . . if . . . such person could have joined as an original party in the action.” Like all of the petitioners in both *Carter* and *Gressman*, each of the Appellants is a Pennsylvania citizen and voter who resides in a congressional district that will be malapportioned and otherwise constitutionally flawed should a new congressional districting plan not be in effect in time for the 2022 primary election. Each Appellant could thus have joined as an original party in the action.

Rule 2327(4) directs that an applicant “shall be permitted to intervene . . . if . . . the determination of such action may affect any legally enforceable interest of such person.” Appellants have an interest in the determination of this action that is legally enforceable, because it is “substantial, direct, and immediate,” *see Markham v. Wolf*, 136 A.3d 134, 139 (Pa. 2016). Specifically, they have a substantial, legally cognizable interest in protecting their right to vote under a

congressional districting plan that comports with the Pennsylvania Constitution. A districting plan that is drawn to benefit one party over another or one candidate over another at the expense of voters violates each Appellant's right to free and equal elections. *See, e.g., Albert v. 2001 Legislative Reapportionment Comm'n*, 790 A.2d 989, 994-95 (Pa. 2002) (“[I]t is the right to vote and the right to have one's vote counted that is the subject matter of a reapportionment challenge.”); *see also Baker v. Carr*, 369 U.S. 186, 206 (1962) (“[V]oters who allege facts showing disadvantage to themselves as individuals have standing to sue.”).

2. The Commonwealth Court Offered no Basis to Deny Intervention under Pa.R.C.P. 2329

While intervention may be denied under Pa.R.C.P. 2329 in narrow circumstances, no party asserted that was appropriate here. The Commonwealth Court denied the petition without explanation or reasoning. There is simply no record at all, much less a reasoned decision, as to why the original parties and elected officials should be permitted to draw the new congressional map, but the public interest groups represented on this appeal should be excluded from all but the very first stage of the Commonwealth Court's merit proceedings. The failure to render a reasoned decision is itself an abuse of discretion. Where, as here, a decision is “manifestly unreasonable” or has “such lack of support so as to be clearly erroneous,” an abuse of discretion is established. *Commonwealth v. Dillon*, 925 A.2d at 136.

For the sake of completeness, and to show that there is no possible set of facts under which the Commonwealth Court could have properly denied intervention, Appellants address each of the possible bases for refusing intervention under Rule 2329 below.

a. There is No Basis to Deny Intervention under Pa.R.C.P. 2329(1)

With respect to Rule 2329(1), the intervention petition below was in subordination to and recognition of the propriety of the action. Like the parties and allowed intervenors, Appellants agree that the Pennsylvania courts must draw a congressional plan. All they seek is the right to participate in that process on equal terms with the other parties.

b. There is No Basis to Deny Intervention under Pa.R.C.P. 2329(3)

Similarly, the request to intervene was certainly timely and otherwise in compliance with Rule 2329(3). These actions were commenced on December 17, 2021. The Commonwealth Court issued an order requiring proposed intervenors to file intervention petitions by December 31, 2021, and Appellants filed a timely petition on that day. There can be no question of timeliness.

Nor would Appellants' participation as parties "unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties." The Commonwealth Court has already allowed Appellants to file a proposed congressional plan, plus a supporting brief and expert report, at 5pm today, and

Appellants will file a single proposed plan today regardless of their status as amici or parties. A reversal by this Court would change nothing about that. But reversal would bring about two key changes: (1) Appellants would be allowed to participate in the responsive briefing on January 26 and (2) Appellants would be allowed to participate in the hearing on January 27 and 28. A hearing that already has nine participating groups can add a tenth with no “undue” delay, particularly when the prospect of a slightly more populated proceeding is weighed against the tremendous significance of the issues in this case. Nor would the participation of the Appellants “embarrass” or “prejudice” anyone. To the contrary, full participation by all interested parties is required in redistricting matters. As U.S. Representative Guy Reschenthaler and other congressional intervenors argued to the court below:

while the Carter Petitioners suggest that the nature of this action counsels in favor of limiting the number of intervenors, that argument lacks merit. Indeed, the *Mellow v. Mitchell* Court liberally allowed intervention in an effort to promote equity and openness in the process, even permitting Congressman Lucien Blackwell to intervene (limited to filing a brief) after the record closed, thus indicating the Court’s willingness to permit intervention. *See* [607 A.2d 204], 212-13 [(Pa. 1992)]; *see also id.* at 205 (“The Attorney General intervened and additional parties, a number of whom submitted plans of their own, were also granted intervenor status to represent the interests of specific counties or other geographical areas around the State or to protect the voting rights of African-Americans in various congressional districts.”). Indeed, adequacy of representation in the redistricting context is not readily assumed and thus the “normal practice in reapportionment controversies” is to allow intervention liberally.

R. at 410a.

c. There is No Basis to Deny Intervention Under Pa.R.C.P.2329(2)

Thus, the only conceivable basis to deny intervention would be under Rule 2329(2), on the ground that Appellants' interests are adequately represented. There is no support for such a finding in the record, and certainly, none of the parties have made that argument. The Commonwealth Court did not address the issue, and in fact, implicitly ruled to the contrary by soliciting a single map from each refused intervenor group. Thus, the Commonwealth Court apparently saw *some* value in the refused intervenors' maps – just not enough to invite them to participate in the hearing or comment on the maps of others. Without providing any explanation or addressing the relevant rules of procedure, the Commonwealth Court created a class of second-class litigants, who have only partial rights to participate in the trial-court proceedings, and none on appeal to this Court.

The Commonwealth Court lacks the power to shut the courthouse doors to those who meet the requirements for intervention, and it is particularly egregious to have done so to public interest litigants on a matter of such great public importance. The principal cause of gerrymandering, which has been a significant problem in the Commonwealth, is the desire of the politicians to advance their own interests, rather than the public interest. For the Commonwealth Court to allow all manner of politicians to participate as intervenors, but refuse to admit non-

politician Pennsylvania voters associated with public interest organizations, is wrong in principle and hardly lends confidence to a process already fraught with political overtones.

Moreover, while the Commonwealth Court failed to examine the issue, the existing parties to the litigation do not adequately represent Appellants' interests because those interests "may diverge" from those of the Petitioners, Respondents, and other potential intervenors. *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 314 (Pa. Commw. Ct. 1999). Because no party currently in the litigation "unequivocally share[s] [Applicants]' interest[s]," the Application for Leave to Intervene should be granted. *Id.*

Political parties, their leaders, and candidates for election or reelection do not necessarily share interests with the Appellants in ensuring that maps are drawn according to neutral criteria, as opposed to criteria that may serve to benefit one party or one or more individual candidates. Through their advocacy and organizing for fair maps and for an end to gerrymandering as active staff or volunteers with organizations and coalitions including Common Cause Pennsylvania, the League of Women Voters of Pennsylvania, and Fair Districts Pennsylvania, Proposed Intervenors Khalif Ali, Maryn Formley, Richard Rafferty, Patrick Beaty, Susan Gobreski, Barbara Hill, Judy Hines, Jodi Greene, and

Timothy L. Kauffman have devoted years of hard work to advancing the cause of free, fair, and nonpartisan redistricting for the Commonwealth.

Moreover, in this redistricting cycle, for the first time ever, home address information is available for state prisoners, making it possible to draw a districting plan based on prisoners' home addresses instead of their cell addresses, thus rectifying the problem of "prison-based gerrymandering." The Legislative Reapportionment Commission has already chosen to use prisoner-adjusted data for redrawing the State Senate and State House maps, and Appellants have a legally enforceable interest in ensuring these prisoner-adjusted data are also used as the basis for Pennsylvania's new congressional districting plan. All Appellants have an interest in ensuring that the congressional districting plan correctly accounts for prisoners' residences as part of the plan's compliance with the equipopulation requirement.

As former prisoners and current members of communities that are disproportionately underrepresented because of prison-based gerrymandering, Appellants John Thompson and Cynthia Alvarado have an especially strong interest in the choice of address data for Pennsylvania's congressional districting plan. No party currently in this case is focused like them on the issue of prison gerrymandering. Mr. Thompson and Ms. Alvarado spent a combined total of nearly fifty years in State Correctional Institutions. Today they live in, and

regularly work or volunteer in, communities that are among the hardest-hit by the reduced representative power that flows from prison-based gerrymandering.

In summary, there was no basis for denying the application to intervene below under Pa.R.C.P. 2329. Appellants have a strong interest in ensuring a fair process and in presenting their particularized views on communities of interest, prison population adjustment and procedure. They wish to participate in the proceedings below and in this Court as parties, not bystanders or commentators. The Commonwealth Court offered no principled reason to refuse intervention – indeed, it offered to no reason at all. And that is the definition of an abuse of discretion.

VIII. CONCLUSION

For all the foregoing reasons, Appellants respectfully request that the Court reverse the January 14, 2022 Order of the Commonwealth Court and grant Appellants intervenor status in the proceedings. Because the proceedings are moving forward rapidly, with a hearing scheduled for January 27 and 28, Appellants respectfully request an expedited determination of this appeal.

Respectfully submitted,

/s/ Benjamin D. Geffen

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Counsel for Appellant Khalif Ali

Dated: January 24, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that the Brief of Appellants complies with the length requirements of Pa.R.A.P. 2135. According to the word count of the word processing system used to prepare this brief, the brief contains 5732 words, not including the supplementary matter as described in Pa.R.A.P. 2135(b).

/s/ Benjamin D. Geffen
Benjamin D. Geffen

Dated: 1/24/2022

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Benjamin D. Geffen
Benjamin D. Geffen

Dated: January 24, 2022

Exhibit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter, Monica Parrilla,	:	CASES CONSOLIDATED
Rebecca Poyourow, William Tung,	:	
Roseanne Milazzo, Burt Siegel,	:	
Susan Cassanelli, Lee Cassanelli,	:	
Lynn Wachman, Michael Guttman,	:	
Maya Fonkeu, Brady Hill, Mary Ellen	:	
Balchunis, Tom DeWall,	:	
Stephanie McNulty and Janet Temin,	:	
Petitioners	:	

v.	:	No. 464 M.D. 2021
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Veronica Degraffenreid, in her official	:
capacity as the Acting Secretary of the	:
Commonwealth of Pennsylvania;	:
Jessica Mathis, in her official capacity	:
as Director for the Pennsylvania Bureau	:
of Election Services and Notaries,	:
Respondents	:

Philip T. Gressman; Ron Y. Donagi;	:
Kristopher R. Tapp; Pamela Gorkin;	:
David P. Marsh; James L. Rosenberger;	:
Amy Myers; Eugene Boman;	:
Gary Gordon; Liz McMahan;	:
Timothy G. Feeman; and Garth Isaak,	:
Petitioners	:

v.	:	No. 465 M.D. 2021
----	---	-------------------

Veronica Degraffenreid, in her official	:
capacity as the Acting Secretary of the	:
Commonwealth of Pennsylvania;	:
Jessica Mathis, in her official capacity	:
as Director for the Pennsylvania Bureau	:
of Election Services and Notaries,	:
Respondents	:

ORDER

AND NOW, this 14th day of January, 2022, in consideration of the petitions to intervene and the applications for expedited review and the responses thereto filed in the above-consolidated actions, it is hereby ORDERED:

1. This Order supersedes this Court's December 20, 2021 Order.
2. The Applications for Leave to Intervene of: (i) the Speaker and Majority Leader of the Pennsylvania House of Representative and the President Pro Tempore and Majority Leader of the Pennsylvania Senate, (ii) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; (iii) Tom Wolf, Governor of the Commonwealth of Pennsylvania; (iv) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania; (v) Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives; and (vi) Congressman Guy Reschenthaler, Swatara Township Commissioner Jeffrey Varner, Tom Marino, Ryan Costello, and Bud Shuster are **GRANTED**.

Pursuant to the Notice of Amendment and Joinder from Senate Democratic Caucus Intervenors and Democratic Senator Intervenors, the Applications for Leave to Intervene of: (i) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; and (ii) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania are hereby joined, and these individuals shall constitute a single party. The Application for Intervention filed by Democratic Senator Intervenors shall be withdrawn. Democratic Senator Intervenors are added to the Senate Democratic Caucus Intervenors' Application for Intervention.

These intervenors which are hereinafter referred to as Parties shall be allowed to participate in these consolidated actions as parties. Any answers to the Petitions for Review attached to applications to intervene as exhibits are deemed filed.

3. All Parties shall submit for the Court's consideration at least one (1) but no more than two (2) proposed 17-district congressional redistricting plan(s) that are consistent with the results of the 2020 Census and, if the party chooses to

do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on **Monday, January 24, 2022.**

4. Parties must file a responsive brief and/or a responsive expert report (from the same expert who prepared the **January 24** report or any other expert), addressing other parties' **January 24** submissions, by 5:00 p.m. on **Wednesday, January 26, 2022.**
5. The Applications for Leave to Intervene as parties filed by (i) Voters of the Commonwealth of Pennsylvania; (ii) Citizen-Voters; (iii) Draw the Lines-PA; and (iv) Khalif Ali et al. are **DENIED.**

Voters of the Commonwealth of Pennsylvania, Citizen-Voters, Draw the Lines-PA, and Khalif Ali et al., are permitted to participate in these matters as Amicus Participants, which means that their participation shall be limited to submissions to the Court **in writing** as set forth in Paragraph 6 of this Order.

6. Amicus Participants who wish to submit for the Court's consideration one (1) proposed 17-district congressional redistricting map/plan that is consistent with the results of the 2020 Census shall file the proposed map/plan and, if the Amicus Participant chooses to do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on **Monday, January 24, 2022.**
7. All proposed 17-district congressional redistricting maps/plans shall comply with constitutional standards and any other standards required by law.
8. After submission, no proposed plan/map may be later modified or amended.
9. No Party or Amicus Participant may take discovery in this matter.
10. The Parties shall submit to the Court a Joint Stipulation of Facts by 2:00 p.m. on **Wednesday, January 26, 2022.**
11. The Court shall conduct an evidentiary hearing on **Thursday, January 27, 2022, and Friday, January 28, 2022,** participation in which is limited to the Parties as identified herein. The hearing will begin at 9:30 a.m. in Courtroom 3001 of the Pennsylvania Judicial Center, Harrisburg, PA. It shall be the responsibility of Petitioners to secure the services of a court reporter(s)

throughout the duration of the hearing. Each Party is limited to presenting one witness at the hearing, who shall be subject to cross examination by the other Parties. Opening and closing statements and argument by Parties shall be permitted. The Court will also consider revisions to the 2022 election schedule/calendar as part of the hearing.

- 12.If the General Assembly has not produced a new congressional map by January 30, 2022, the Court shall proceed to issue an opinion based on the hearing and evidence presented by the Parties.

s/ Patricia A. McCullough
PATRICIA A. McCULLOUGH, Judge