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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.

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; PEDRO A. CORTÉS, IN HIS
CAPACITY AS 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.

No.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days, or within the time set by order of the court, after this petition for review and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Dauphin County Bar Association
Lawyer Referral Service
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted treinta (30) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objections a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notification. Ademas, la corte puede decider a favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perer dinero o sus propiedades u otros derechos importantes para usted.

Lleva esta demanda a un abogado immediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal sevicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede consequir alstencia legal.

Colegio de Abogados de Condado de Dauphin
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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.
 	
 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; PEDRO A. CORTÉS, IN HIS CAPACITY AS 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.
	No.

TO:

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16th Floor, Strawberry Square
Harrisburg, PA 17120

Pennsylvania General Assembly
c/o Senator Joseph B. Scarnati III
Senate President Pro Tempore
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Harrisburg, PA 17120-3025
Room: 292 Main Capitol Building
c/o Representative Michael C. Turzai
Speaker of the House
139 Main Capitol Building
PO Box 202028
Harrisburg, PA 17120-2028

Governor Thomas W. Wolf
Office of the Governor
508 Main Capitol Building
Harrisburg, PA 17120

**Lieutenant Governor Michael J.
Stack III**
President of the Senate
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Harrisburg, Pennsylvania 17120

Representative Michael C. Turzai
Speaker of the House
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Senator Joseph B. Scarnati III
Senate President Pro Tempore
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Secretary Pedro A. Cortés
Pennsylvania Department of State
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Commissioner Jonathan M. Marks
Pennsylvania Department of State
Bureau of Commissions, Elections
and Legislation
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Harrisburg, PA 17120

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Petition for

Review within thirty (30) days from service hereof or a judgment may be entered

against you.

BY: */s/ Mary M. McKenzie*
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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MANTELL, PRISCILLA MCNULTY, THOMAS ULRICH, ROBERT
MCKINSTRY, MARK LICHTY, LORRAINE PETROSKY,

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HIS CAPACITY AS GOVERNOR OF PENNSYLVANIA; MICHAEL J.
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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; PEDRO A. CORTÉS, IN HIS
CAPACITY AS 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.

No.

PETITION FOR REVIEW
<u>ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION</u>

INTRODUCTION

1.   This case is about one of the greatest threats to American democracy today: partisan gerrymandering. A partisan gerrymander occurs when the political party in control of redistricting redraws congressional or state legislative districts to entrench that party in power and prevent voters affiliated with the minority party from electing candidates of their choice. The result is that general election outcomes are rigged—they are predetermined by partisan actors sitting behind a computer, not by the candidates, and not by the voters.

2.   This practice is illegal and has been condemned by the Supreme Courts of the United States and the Commonwealth of Pennsylvania. The U.S. Supreme Court has explained that "[p]artisan gerrymanders . . . are incompatible with democratic principles." *Ariz. State Legis. v. Ariz. Indep. Redist. Comm'n*, 135 S. Ct. 2652, 2658 (2015) (alterations omitted). The Pennsylvania Supreme Court has written that a partisan gerrymander would violate the Pennsylvania Constitution when "there was intentional discrimination against an identifiable political group" that resulted in "an actual discriminatory effect on that group." *Erfer v. Commonwealth*, 794 A.2d 325, 332 (Pa. 2002). A partisan gerrymander "burdens rights of fair and effective representation" by enabling one political party to entrench itself in power while diluting the votes of citizens who affiliate with the

- 2 -

party out of power. *Vieth v. Jubelirer*, 541 U.S. 267, 312 (2004) (Kennedy, J.,

concurring in judgment).

3.   While neither political party has a monopoly on the practice, this case

challenges the partisan gerrymandering of the Commonwealth's current

congressional districts by the Republican majority in the Pennsylvania General

Assembly. Following the 2010 Census, Republican legislators dismantled

Pennsylvania's existing congressional districts and stitched them back together

with the goal of maximizing the political advantage of Republican voters and

minimizing the representational rights of Democratic voters. According to the

Brennan Center for Justice, the districting plan that resulted (the "2011 Plan"),

which was signed into law by the Republican then-Governor, is one of the three

most "extreme" gerrymanders in the nation.[1] Indeed, by some measures,

Pennsylvania's gerrymander is the "worst offender" in the country.[2]

4.   The 2011 Plan was the product of a national movement by the

Republican Party to entrench its own representatives in power by utilizing the

latest advances in mapmaking technologies and big data to gerrymander districts

more effectively than ever before. Republican mapmakers used sophisticated

---

[1] Laura Royden & Michael Li, *Extreme Maps*, Brennan Center for Justice, at 1 (2017), *available at* https://www.brennancenter.org/publication/extreme-maps.

[2] *Id.* at 9.

computer modeling techniques, in Pennsylvania and elsewhere, to manipulate district boundaries with surgical precision to maximize the number of seats their party would win in future elections.

5.   And their effort has been overwhelmingly successful. In 2012, Republican candidates won only 49% of the statewide congressional vote, but remarkably won 13 of 18—or 72%—of Pennsylvania's congressional seats. In 2014 and 2016, Republican candidates retained the same 72% share of Pennsylvania's seats, even while winning only 55% and 54% shares of the statewide vote.

6.   The 2011 Plan achieved these lopsided results by "packing" Democratic voters into five districts that are overwhelmingly Democratic, and "cracking" the remaining Democratic voters by spreading them across the other 13 districts such that Republicans constitute a majority of voters in each of these 13 districts. The result is a districting plan that is utterly unresponsive to—and often flouts—the will of voters. For example, even though Democratic candidates won 6 points more in the statewide vote in 2012 compared to 2014, the number of Democrats elected was no different across the two elections.

7.   The composition of the enacted districts reflects how the Republicans responsible for redistricting achieved this partisan result. For example, the city of Reading—a Democratic stronghold—was carved out of the 6th Congressional

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District, where it would naturally reside, and placed into the 16th District, where Republicans made up the majority. Similarly, in the 17th District, the Democratic-leaning cities of Scranton (in Lackawanna County), Wilkes-Barre (in Luzerne County), and Easton (in Northampton County) were packed into a district that was already reliably Democratic, removing any risk that Wilkes-Barre voters (who would reside in the 11th District if county boundaries were respected) would tilt the 11th District to Democrats. And in the 7th District, portions of the city of Chester were carved out by packing these voters into the reliably Democratic 1st District.

8.   As illustrated infra at Paragraphs 55-59, these decisions resulted in district lines that are absurd. Pennsylvania's 7th Congressional District has been described as "Goofy Kicking Donald Duck."[3] The 12th District could be mistaken for the boot of Italy. The 6th resembles the State of Florida, with perhaps a longer and more jagged Panhandle. These shapes lay bare the lengths that Republicans went to deny Petitioners and millions of other voters their constitutional rights and to lock in an artificial political advantage for Republicans.

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[3] Aaron Blake, *Name That District Contest Winner: 'Goofy Kicking Donald Duck'*, Wash. Post, Dec. 29, 2011, https://www.washingtonpost.com/blogs/the-fix/post/name-that-district-contest-winner-goofy-kicking-donald-duck/2011/12/29/gIQA2Fa2OP_blog.html?utm_term=.a7863a1c4f3a.

9.   While the districts are so bizarrely engineered that the only fair inference is that the Republican mapmakers made them so for partisan advantage, this partisan purpose is confirmed by an array of statistical techniques. Indeed, just as modern technology enabled Republicans to accomplish their gerrymander with more precision than ever before, it can be used to expose this discrimination for what it is. Computer modeling used by political scientists demonstrates that the Republican bias of the enacted plan could not have resulted from the use of traditional redistricting criteria such as contiguity and compactness, and cannot be explained by any natural clustering of voters in Pennsylvania. Rather, it is a statistical certainty that the Republican bias of the enacted plan could have resulted *only* from impermissible partisan intent.

10.   Other statistical tests further confirm that the enacted plan reflects a deliberate and successful effort to disadvantage Democratic voters. The "efficiency gap," which a three-judge panel recently applied in striking down Wisconsin's state house districts, measures how many votes the enacted plan "wastes" for the disfavored party, relative to the favored party, through cracking and packing. *See generally Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016), *jurisdictional statement filed* (U.S. Mar. 24, 2017) (No. 16-1161). In 2012, the efficiency gap of Pennsylvania's congressional districts was *the largest* in the nation. Another test for identifying political gerrymandering is the "mean-median

gap," which measures the gap between the average Democratic vote share across

the Commonwealth and Democratic vote share in the median district, *i.e.*, the

district either party would need to win to earn a majority of districts. Again,

Pennsylvania's mean-median gap is one of the largest in the nation, reflecting the

deliberate effort to maximize the number of seats Republicans win by packing

Democrats into a few districts.

11.   A variety of statistical modeling techniques and tests all lead to the

same conclusion: the enacted plan could have resulted only from unconstitutional

partisan intent, and the effect of that discrimination is significant and enduring.

12.   Along with other forms of equitable relief, Petitioners seek a judicial

declaration that the enacted plan, by discriminating against Democratic voters on

the basis of their political expression and affiliation, violates the Pennsylvania

Constitution.

PARTIES

A.   Petitioners

13.   The League of Women Voters of Pennsylvania ("LWVPA"), a

nonpartisan political organization, encourages the informed and active

participation of citizens in government, works to increase understanding of major

public policy issues, and influences public policy through education and advocacy.

The League supports full voting and representational rights for all eligible

Commonwealth citizens and opposes efforts to disadvantage or burden voters based on their political affiliation.

14.   Petitioner Carmen Febo San Miguel is an Executive Director of a non-profit cultural organization and a former physician who resides in the 1st Congressional District in Philadelphia. Febo San Miguel is a registered Democrat who has consistently voted for Democratic candidates for Congress. Democrats have won every congressional election in the 1st District under the 2011 Plan with over 80% of the vote, at times with the Democratic candidate running unopposed.

15.   Petitioner James Solomon is a retired federal employee who resides in Philadelphia in the 2nd Congressional District. Solomon is a registered Democrat who has consistently voted for Democratic candidates for Congress. Democrats have won every congressional election in the 2nd District since 2002 with over 85% of the vote.

16.   Petitioner John Greiner is a software engineer who resides in the 3rd Congressional District, in Erie, Erie County. Greiner is a registered Democrat and has consistently voted for Democratic candidates for Congress. Before the 2011 Plan, the 3rd District was a competitive district: Republicans won in 2002, 2004, 2006, and 2010, while Democrats won in 2008. But the Republican representative, Mike Kelly, has comfortably won reelection in every election since the 2011 Plan, running unopposed in 2016.

17.   Petitioner John Capowski is a law professor emeritus residing in Camp Hill, Cumberland County, in the 4th Congressional District. Capowski is a registered Democrat who has consistently voted for Democratic candidates for Congress. Prior to the 2011 Plan, the 4th District was a competitive district: Republicans won in 2002 and 2004, and Democrats won in 2006, 2008, and 2010. But the Republican representative, Scott Perry, has easily won reelection in every election since the 2011 Plan.

18.   Petitioner Gretchen Brandt is a mother of two and a school board director residing in the 5th Congressional District, in State College, Centre County. Brandt is a registered Democrat who has consistently voted for Democratic candidates for Congress. Republicans have won every congressional election in the 5th District since 2002.

19.   Petitioner Thomas Rentschler is a former school teacher and attorney who resides in Exeter Township, Berks County, which falls in the 6th Congressional District. Rentschler is a registered Democrat who has consistently voted for Democratic candidates for Congress. The 6th District had been an extremely competitive district under the prior congressional plan, with 4 of the 5 congressional elections decided by less than 5 points. But the 6th district has been far less competitive under the 2011 Plan, with the Republican representative winning each election by more than 12 points.

- 9 -

20.   Petitioner Mary Elizabeth Lawn is a chaplain at a retirement

community who lives in Chester, Delaware County. Lawn is a registered

Democrat who has consistently voted for Democratic candidates for Congress.

Prior to the 2011 Plan, Lawn's home fell in the 1st Congressional District, which

has consistently elected Democrats. But under the 2011 Plan, Lawn was moved to

the 7th Congressional District, which has voted for Republicans by comfortable

margins in every election since the redistricting.

21.   Petitioner Lisa Isaacs is an attorney who resides in the 8th

Congressional District in Morrisville, Bucks County. Isaacs is a registered

Democrat who has consistently voted for Democratic candidates for Congress.

Prior to the 2011 Plan, the 8th District was a competitive district: Republicans won

in 2002, 2004, and 2010, while Democrats won in 2006 and 2008. Under the 2011

Plan, however, Republican candidates have won by 8 points or more in each

election.

22.   Petitioner Don Lancaster is a retired teacher who resides in Indiana

County, in the 9th Congressional District. Lancaster is a registered Democrat who

has consistently voted for Democratic candidates for Congress. Republicans have

won every congressional election in the 9th District since 2002 with more than

60% of the vote.

- 10 -

23.   Petitioner Jordi Comas is an academic and chef residing in Lewisburg, Union County. Comas is a registered Democrat in Pennsylvania's 10th Congressional District who has consistently voted for Democratic candidates for Congress. Prior to the 2011 Plan, the 10th District was often a competitive district: Republicans won in 2002, 2004, and 2010, and Democrats won in 2006 and 2008. But the Republican representative, Tom Marino, easily won election in 2012 with over 65% of the vote and has been comfortably reelected ever since.

24.   Petitioner Robert Smith, a retired health executive, resides in Bear Creek Village Borough, Luzerne County, in the 11th Congressional District. Smith is a registered Democrat who has consistently voted for Democratic candidates for Congress. Prior to the 2011 Plan, the 11th District was often a competitive district: Democrats won in 2002, 2004, 2006 and 2008, but were unseated in 2010 when a Republican, Lou Barletta, defeated the Democratic incumbent. Since the 2011 Plan, Lou Barletta has comfortably won reelection with about 60% of the vote.

25.   Petitioner William Marx is a high school civics teacher and Army Reservist residing in Delmont, Westmoreland County, which falls in the 12th Congressional District. Marx is a registered Democrat who has consistently voted for Democratic candidates for Congress. Prior to the 2011 Plan, Democrats won every congressional election in the 12th District since 2002, often winning over 60

percent of the vote. Since redistricting, Republicans have won every election, winning by more than 18 points in the last two elections.

26.   Petitioner Richard Mantell is a retired school administrator residing in Jenkintown, Montgomery County, which sits in the 13th Congressional District. Mantell is a registered Democrat who has consistently voted for Democratic candidates for Congress. Prior to the 2011 Plan, elections in the 13th District were generally competitive, with Democrats winning each election but with less than 60% of the vote in three out of five elections. But after Democratic voters were packed into the district under the 2011 Plan, Democrats won easily in 2012 and 2014 and ran unopposed in the 2016 election.

27.   Petitioner Priscilla McNulty is a manager at a non-profit who resides in the 14th Congressional District in Pittsburgh, Allegheny County. McNulty is a registered Democrat who has consistently voted for Democratic candidates for Congress. Democrats have easily won every congressional election in the 14th District since 2002.

28.   Petitioner Thomas Ulrich is a retired school teacher who resides in Bethlehem, Lehigh County, falling in the 15th Congressional District. Ulrich is a registered Democrat who has consistently voted for Democratic candidates for Congress. Republicans have won every congressional election in the 15th District since 2002.

29.   Petitioner Robert B. McKinstry, Jr. is an environmental attorney who resides in East Marlborough Township, Chester County, in the 16th Congressional District. McKinstry is a registered Democrat who has consistently voted for Democratic candidates for Congress. Republicans have won every congressional election in the 16th District since 2002.

30.   Petitioner Mark Lichty is a retired attorney and manufacturer who resides in East Stroudsburg, Monroe County, in the 17th Congressional District. Lichty is a registered Democrat who has consistently voted for Democratic candidates for Congress. Democrats have won every congressional election in the 17th District since 2002.

31.   Petitioner Lorraine Petrosky is a retired preschool teacher who resides in the 18th Congressional District in Latrobe, Westmoreland County. Petrosky is a registered Democrat who has consistently voted for Democratic candidates for Congress. Republicans have won every congressional election in the 18th District since 2002, almost always with more than 60% of the vote.

B.   Respondents

32.   Respondent the Commonwealth of Pennsylvania has its capital located in Harrisburg, Pennsylvania.

33.   Respondent the Pennsylvania General Assembly is the state legislature for the Commonwealth of Pennsylvania and is comprised of the State

House and State Senate. The General Assembly convenes in the State Capitol building in Harrisburg, Pennsylvania.

34.   In Pennsylvania, the boundaries for congressional districts are redrawn every ten years after the national census by legislative action in a bill that proceeds through both chambers of the General Assembly and is signed into law by the Governor. In 2011, Republicans controlled every step of that process. Most of the Respondents named below were not involved in drafting Pennsylvania's current plan. They are named in their official capacities as parties who would be responsible for implementing the relief Petitioners seek.

35.   Respondent Thomas W. Wolf is Governor of the Commonwealth and is sued in his official capacity only. As Governor, Respondent Wolf is responsible for signing bills into law as well as the faithful execution of the 2011 Plan.

36.   Respondent Pedro A. Cortés is the Secretary of the Commonwealth and is sued in his official capacity only. In that capacity, he is charged with the general supervision and administration of Pennsylvania's elections and election laws.

37.   Respondent Jonathan Marks is the Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State and is sued in his official capacity only. In that capacity, he is charged with the

- 14 -

supervision and administration of the Commonwealth's elections and electoral process.

38.   Respondent Michael J. Stack III, the Lieutenant Governor of the Commonwealth, serves as President of the Pennsylvania Senate and is sued in his official capacity only.

39.   Respondent Michael C. Turzai is the Speaker of the Pennsylvania House of Representatives and is sued in his official capacity only.

40.   Respondent Joseph B. Scarnati III is the Pennsylvania Senate President Pro Tempore and is sued in his official capacity only.

JURISDICTION

41.   The Court has original jurisdiction over this Verified Petition for Review pursuant to 42 Pa. Cons. Stat. § 761(a).

FACTUAL ALLEGATIONS

A.   National Republican Party Officials Target Pennsylvania For Partisan Gerrymandering

42.   In the years leading up to the 2010 census, national Republicans leaders undertook a concerted effort to gain control of state governments in critical swing states such as Pennsylvania. The Republican State Leadership Committee (RSLC) codenamed their plan "the REDistricting Majority Project," or "REDMAP." REDMAP's goal was to "control[] the redistricting process in . . .

states [that] would have the greatest impact on determining how both state legislative and congressional district boundaries would be drawn."[4]

43.   The RSLC intended that this project would "solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade."[5] The REDMAP homepage explains that "Republicans [had] an opportunity to create 20-25 new Republican Congressional Districts through the redistricting process. . . , solidifying a Republican House majority."[6]

44.   Pennsylvania was a key REDMAP "target state." As the second most populous swing state in the nation, Pennsylvania currently holds 18 seats in the U.S. House of Representatives. Pennsylvania is also one of only a handful of states that has consistently lost seats in the U.S. House of Representatives every ten years through reapportionment, having lost at least one House seat every ten years since 1920. These features of Pennsylvania's political landscape make it a prime target for partisan gerrymandering.

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[4] *2012 REDMAP Summary Report*, Redistricting Majority Project (Jan. 4, 2013), http://www.redistrictingmajorityproject.com/?p=646.

[5] *Id.*

[6] Redistricting Majority Project, http://www.redistrictingmajorityproject.com/ (last visited June 9, 2017).

45.   Heading into the November 2010 election, Democrats held the Pennsylvania House by a slim margin. The RSLC focused its resources on Pennsylvania in the 2010 election, targeting and winning three key house races that would swing control of the Pennsylvania House to Republicans. During that same election, Republicans also won the governorship, while retaining control of the Pennsylvania Senate. Thus, after the 2010 election, Republicans had exclusive control over congressional redistricting in Pennsylvania. The Republicans quickly set to work to redraw the congressional map in a way that would entrench the Republican Party's dominance in Pennsylvania's delegation to the U.S. House for the next decade.

46.   On information and belief, Republicans, including key members of the Pennsylvania Senate and House Committees on State Government, communicated with Republican leaders in Washington, D.C. and elsewhere to create a plan that would maximize the number of Republicans elected to the U.S. House.

47.   Mapmakers seeking to create a partisan gerrymander do so primarily through two means—"cracking" and "packing" voters of the opposing political party into congressional districts that will dilute their political power. "Cracking" is achieved by dividing a party's supporters among multiple districts so that they fall short of a majority in each district. "Packing" involves concentrating one

- 17 -

party's backers in a few districts that they win by overwhelming margins to minimize the party's votes elsewhere. This cracking and packing results in "wasted" votes: votes cast either for a losing candidate (in the case of cracking) or for a winning candidate but in excess of what he or she needs to prevail (in the case of packing).

48.   Republicans worked with highly skilled and partisan mapmakers to generate the most advantageous possible map for the Republican Party. Using sophisticated computer software and data such as voter registration information and election results, the Republicans' mapmakers created a plan that virtually guaranteed the Republican Party would win in the large majority of Pennsylvania's congressional districts. Their entire aim was to burden the representational rights of Democratic voters, making it nearly impossible for Democrats in cracked districts to elect representative of their choice, and wasting the votes of Democrats in packed districts.

49.   Democrats were not involved in the drawing of the map. The Republican mapmakers created the 2011 Plan through a secret process to avoid scrutiny from Democrats and the general public.

C.   Republicans Introduce Senate Bill 1249

50.   On September 14, 2011, Republicans introduced their redistricting bill, Senate Bill 1249. The bill's primary sponsors were all Republicans: Majority

Floor Leader Dominic F. Pileggi, President Pro Tempore Joseph B. Scarnati III, and Senator Charles T. McIlhinney Jr. The Republican leadership went to extraordinary lengths to conceal their intent.

51.   As introduced, Bill 1249 was simply an empty shell. It contained no map showing the proposed congressional districts. Each congressional district was described in the following fashion: "The [Number] District is composed of a portion of this Commonwealth." The same held true through the second reading of the bill. This was a deliberate effort on the part of the Republicans to prevent Democrats and the public from understanding the nature of the Republicans' redistricting plan.

52.   Then, three months after they had introduced SB 1249, on the morning of December 14, 2011—the day of the vote on the bill—the Republicans suddenly amended the bill to add for the first time the actual descriptions of the congressional districts. Once the details of the plan were released, it became clear why the Republicans had kept it a secret.

53.   As explained below, SB 1249 represented, by any measure, one of the most extreme partisan gerrymanders in American history. One of Pennsylvania's leading political scientists, Franklin & Marshall political science professor Terry Madonna, described it as "[t]he most gerrymandered map [he had] seen in the

modern history of our state."[7] Even Sean Trende, who testified in defense of

Wisconsin's gerrymandered map in *Whitford v. Gill*, suggests that Pennsylvania's

map might be "the Gerrymander of the Decade."[8]

54.   To accomplish their gerrymander, Republicans "packed" Democrats

into "a group of Rorschach-inkblot districts,"[9] and then "cracked" the rest into

districts that would vote reliably Republican. Michael Barone and Chuck

McCutcheon, writing for *The Almanac of American Politics*, described the plan as

follows:

> The plan ruthlessly sewed the state, particular the Philadelphia
> suburbs, into a crazy quilt. Montgomery County, about the population
> of one district, was split five ways to boost the suburban Republican
> trio of Jim Gerlach, Mike Fitzpatrick, and Pat Meehan, who were
> happy to feed their trickiest inner suburbs to Philadelphia's
> Democrats. Mapmakers even awkwardly appended a portion of
> Amish Country to Meehan's 7th District. In the northeast,
> Republicans stuffed Blue Dog [Tim] Holden's 17th District with the
> liberal labor bastions of Scranton, Wilkes-Barre, and Easton to relieve
> pressure on freshman Republican Lou Barletta in the 11th District and
> Charlie Dent in the Lehigh Valley's 15th.
>
> In the west, Republicans split the city of Erie to shore up freshman
> Mike Kelly and carefully merged [Jason] Altmire and [Mark] Critz in
> such a way that neither Democrat could plausibly run elsewhere but

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[7] Charles Thompson, *Congressional Redistricting Puts Pa. Congressmen at a Distance*,
Harrisburg Patriot-News, Dec. 18, 2011,
http://www.pennlive.com/midstate/index.ssf/2011/12/congressional_redistricting_pu.html.

[8] Sean Trende, *In Pennsylvania, the Gerrymander of the Decade?*, Real Clear Politics (Dec. 14,
2011), http://www.realclearpolitics.com/articles/2011/12/14/in_pennsylvania_the_gerrymander
_of_the_decade_112404.html.

[9] *Id.*

either would still be vulnerable in a general election. Sure enough, Critz defeated Altmire in a bitter primary and Republican Keith Rothfus defeated Critz in November. Back east, Holden lost his primary to a more liberal Democrat, and in November, Republicans held onto their other 12 seats without much of a fight.

55.   The "crazy quilt" that the Republicans devised ignores all traditional redistricting criteria and serves no legitimate purpose. It fractures local political subdivisions rather than keeping them intact. For example, enough voters live in Montgomery County for that county to have its own congressional district. But, as seen below, under SB 1249, Montgomery County is split among five districts.[10] Not a single one of those five Congressmen lives in Montgomery County. Other counties—such as Berks and Chester—are similarly divided.


_____
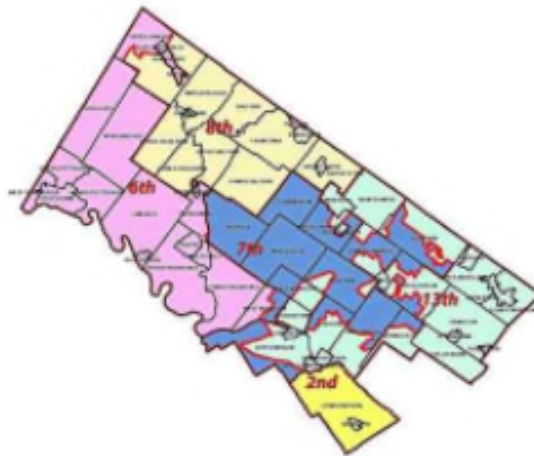
[10] Dan Sokil, *Fair Districts PA Urges Residents to Spread the Word of Redistricting Reform Effort*, Times Herald, May 3, 2017, http://www.timesherald.com/article/JR/20170503/NEWS/170509919.

56.   SB 1249 also resulted in district shapes that make the gerrymander obvious. For example, Pennsylvania's 6th District now looks like the State of Florida:
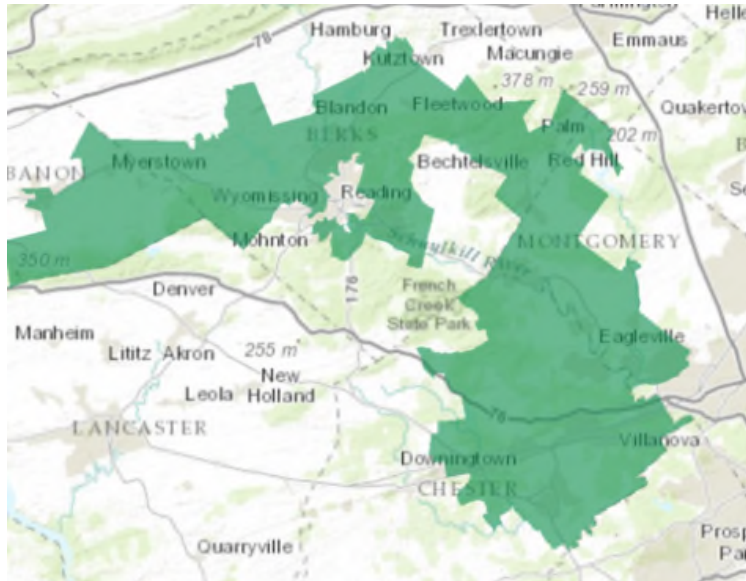

57.   The 12th District looks like the boot of Italy:
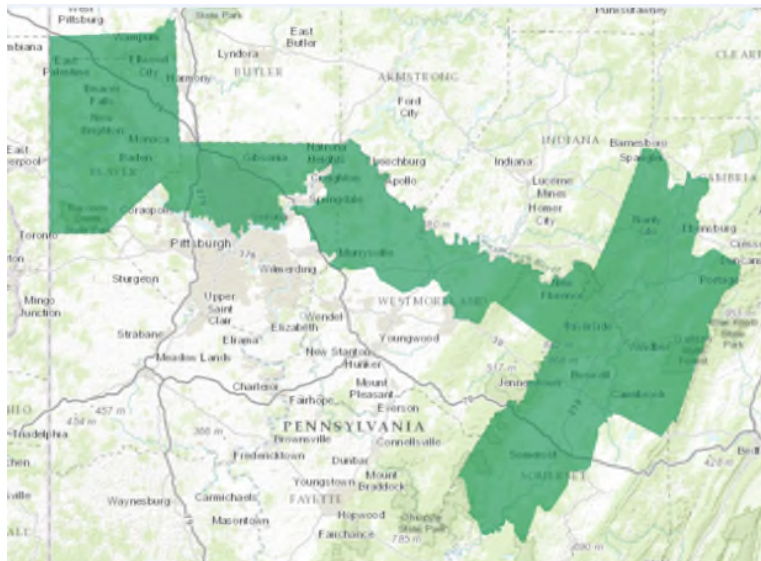
58. And Pennsylvania's notorious 7th District—"Goofy kicking Donald Duck"—is spread out among five counties. At one point in King of Prussia, the district is so narrow that it is held together only by a Creed's Seafood & Steaks. At another point in Coatesville, it is only a medical endoscopy center that connects one part of the district to another.
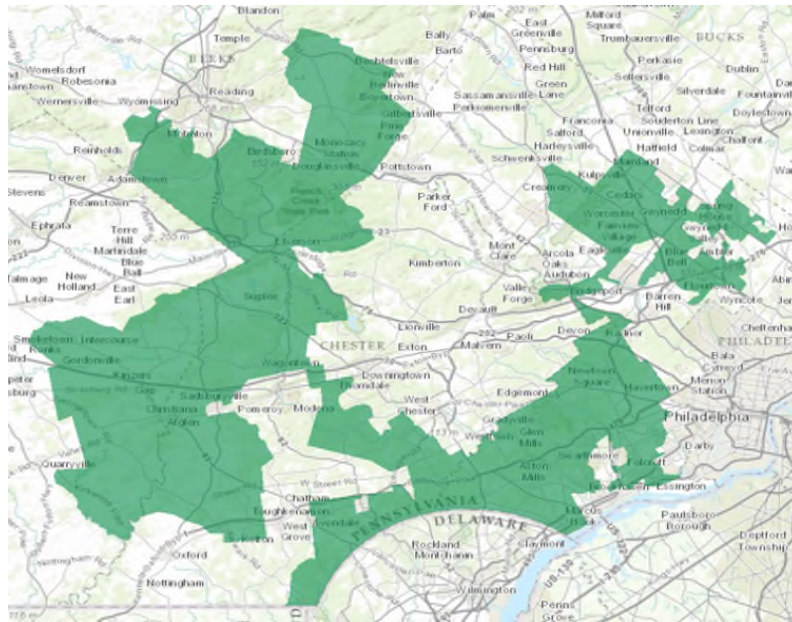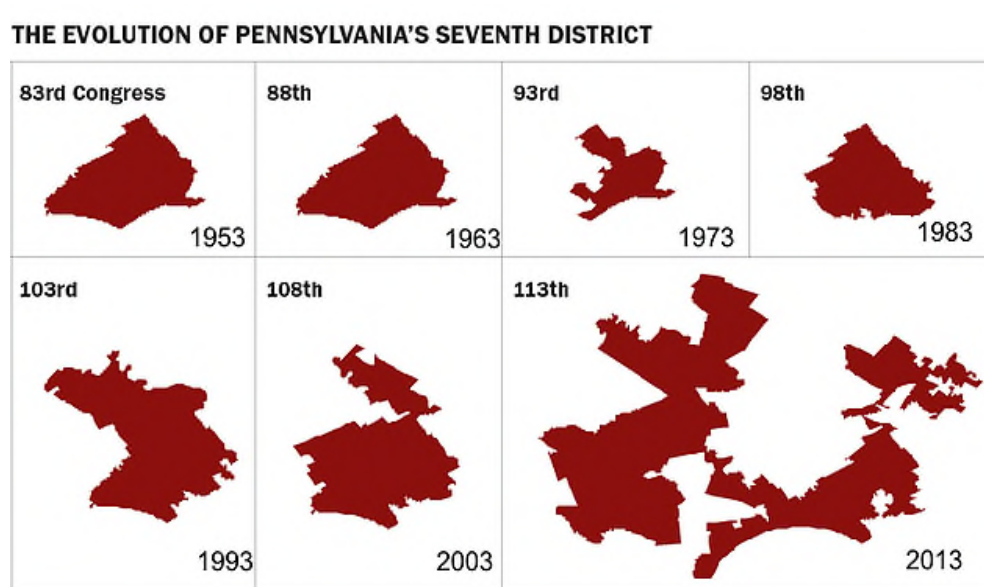
Creed's Seafood & Steaks
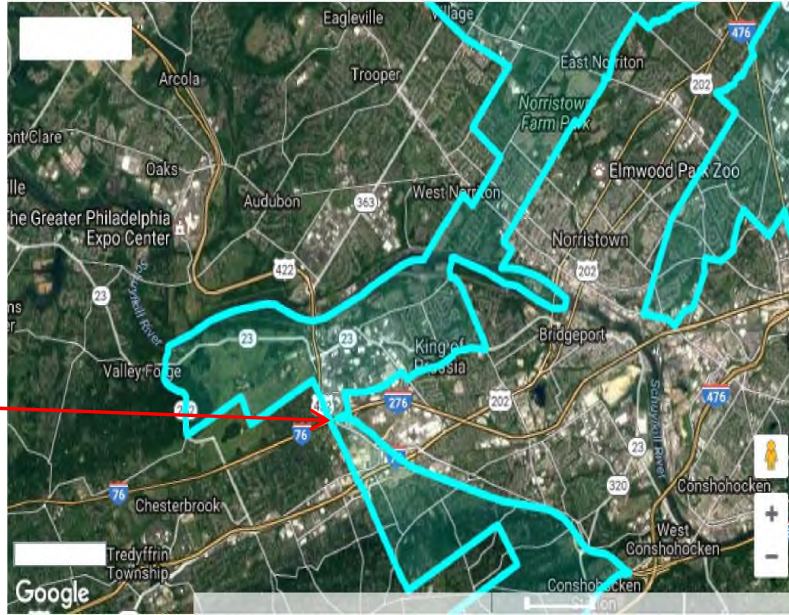
Brandywine GI Associates (endoscopy center)
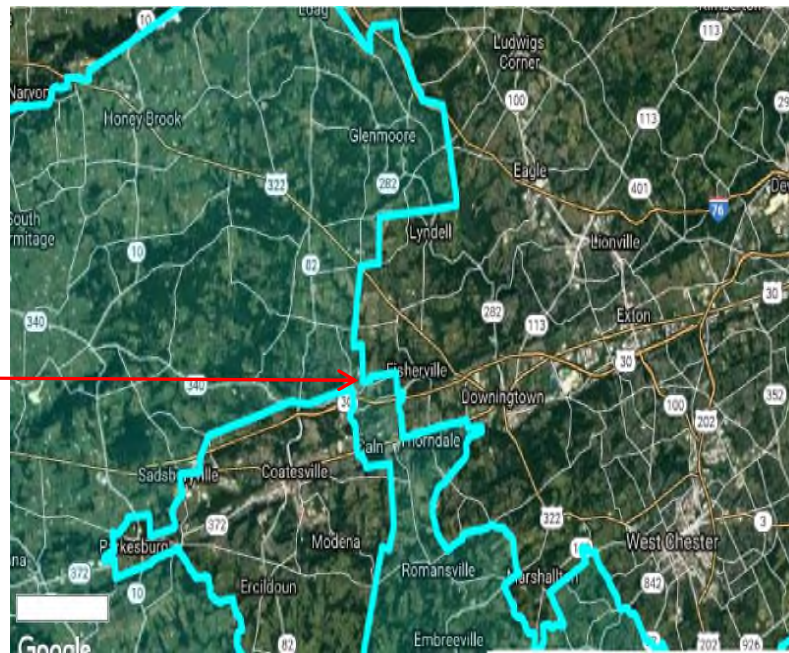
59.   There is no legitimate, constitutionally permissible reason for drawing

districts in this manner. As depicted below, the evolution of the 7th District over

- 24 -

time lays bare the lengths to which Republicans have gone to construct the district

to their advantage. [11]

THE EVOLUTION OF PENNSYLVANIA'S SEVENTH DISTRICT

83rd Congress	88th	93rd	98th
1953	1963	1973	1983

103rd	108th	113th	
1993	2003	2013	

    60.   The 2011 Plan for the entire state is shown in the appendix attached

hereto.

    61.   Because of the way Republicans redrew district boundaries, members

of entire communities are denied a right to cast a vote that has any meaning. For

example, when Republicans redrew the 6th District, they carefully carved out the

city of Reading to make the 6th "safe" for Republicans. They then forced Reading

into the solidly Republican 16th district, where the votes of Democratic voters are

virtually certain never to matter. As a result, Reading residents "really . . . don't

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[11] Christopher Ingraham, *What 60 Years of Political Gerrymandering Looks Like*, Wash. Post, May 21, 2014, https://www.washingtonpost.com/news/wonk/wp/2014/05/21/what-60-years-of-political-gerrymandering-looks-like/?utm_term=.8fb7e83fcbba.

have true representation[;] [their] voice is really muted because of the

gerrymandering that's taken place in Pennsylvania."[12]

62.   Republicans used a similar technique in the 17th District, where they

packed the Democratic-leaning cities of Scranton, Wilkes-Barre, and Easton into a

district that was already reliably Democratic, and removed any risk that Wilkes-

Barre voters (which would reside in the 11th District if county boundaries were

respected) would tilt the 11th District to the Democrats.

63.   In the 7th District, Republicans carved out many Democratic voters in

the city of Chester, packing them into the reliably Democratic 1st District.

64.   Republicans packed minority voters into the 1st and 2nd Districts to

waste their votes. The 1st District now has 66% minority voters, while the 2nd

District now has 71% minority voters. Since the 2011 Plan, both districts have

reliably produced super-majority votes for Democratic candidates of over 80% of

the vote. In the 2nd District, the Democratic representative has won over 87% of

the vote in every election since the 2011 Plan.

65.   Republicans consistently redrew district lines to their advantage

across the Commonwealth, taking one competitive district after another and

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[12] Lindsay Lazarski, *Dividing Lines: How Pennsylvania's Elections Really Are Rigged*, *Keystone Crossroads*, https://keystonecrossroads.atavist.com/dividing-lines-how-pennsylvanias-elections-really-are-rigged.

transforming it into a safe Republican district. For example, under the 2003 plan, in the 11th District, 57.5% of voters voted for Barack Obama in the 2008 presidential election. After redistricting, however, only 47.7% of voters were 2008 Obama voters, a 9.8% swing.

66.   On the day the 2011 Plan was both revealed and voted upon in the Senate, Democratic Senators protested that the plan was partisan, that it was proposed with "extremely short notice," and that the process lacked any transparency. As Democratic Senator Anthony H. Williams explained, "[M]aybe if we had . . . transparency, openness, and most importantly, inclusion, we could have shared the responsibility of coming up with a[] . . . much more representative map. That is not what happened . . . . [W]e have a map that not one Democrat had anything to do with on this side of the aisle."

67.   Democratic Senator Jay Costa unsuccessfully introduced an amendment to the Republican plan that he believed would create 8 districts favorable to Republicans, 4 districts favorable to Democrats, and 6 swing districts.

68.   The Republican majority in the Pennsylvania Senate set SB 1249 for a vote on the very same day that they first publicly disclosed the descriptions of the new districts. The bill passed in the Senate by a vote of 26-24. Not one Democratic Senator voted for the bill.

69.   On December 15, 2011 and December 20, 2011, the Pennsylvania

House of Representatives considered SB 1249. As in the Senate, Democratic

representatives vociferously objected to the lack of transparency in adopting the

plan and to its partisan nature.

70.   Democratic representative Dan Frankel observed that the plan was

clearly an effort to entrench Republicans in power: "[W]hat is taking place here

today, in my view, is a very cynical attempt to institutionalize a Republican

majority of congressional seats in Pennsylvania. . . . That is not good for our

politics. . . . This is not the way we ought to be governing; to overreach, to go

through contortions to create districts that are safe for a majority of Republican

members of Congress is not good public policy. We ought to reject this. This is

not good government; this is a very cynical way to do government."

71.   Democratic Representative Frank Dermody similarly objected: "[T]he

way our system is supposed to work is that the voters are supposed to pick the

politicians. With this map, the politicians pick the voters. This map sets up

districts that are gerrymandered beyond recognition."

72.   Democratic Representative Robert Freeman added: "SB 1249 contains

the worst case of gerrymandering in Pennsylvania in living memory. . . . A look at

the configuration of the congressional district map of 1249 reveals twisted and

distorted districts that were drawn purely for political advantage, with no consideration for compactness of districts or communities of interest."

73.   Democratic Representative Steve Samuelson protested about the lack of transparency: "When this bill had first reading, the Senate had no plan [i.e., the bill had no substantive content]. When this bill had second reading, the Senate had no plan. The map was not revealed until December 13. The details . . . were not available until 9 a.m. on December 14. . . . [T]he public had about 14 hours to see the details. Now, since the Senate came out with their plan on Wednesday, the public has had a grand total of 5 days."

74.   Democratic Representative Babette Josephs similarly protested the extraordinary lack of transparency in what she called a "dreadful" plan, noting that she had never before "seen a hearing in this legislature on a blank bill." "You could not tell, looking at the bill or looking for a map, what . . . the Republicans had in mind."

75.   Democratic Representative Michael Hanna offered an amendment to "create a fair redistricting map . . . [that] will minimize district splits in counties and municipalities and ensure equality of representation across the 18 congressional districts," but, as with Senator Costa's amendment, the House amendment failed.

76. Notwithstanding Democratic opposition, SB 1249 passed in the House on December 20, 2011 by a vote of 136-61. In the end, with passage of the bill a *fait accompli* because of the Republican majority, 36 Democrats voted for the bill. Pennsylvania's Republican Governor, Tom Corbett, signed the bill into law in time for the 2002 U.S. Congressional election. The 2011 Plan remains in effect today.

D. Senate Bill 1249 Burdened the Representational Rights of Democratic Voters

77. Senate Bill 1249 achieved exactly the effect REDMAP intended. In the 2012 election, each party's share of the two-party vote in the 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 in Districts	**77.0%**	**59.3%**
Statewide Vote Share	**50.8%**	**49.2%**

78.   The chart demonstrates how Republicans were able to rig the system so that Democrats could win only 5 of 18 districts even though Democrats won a *majority*—50.8%—of statewide congressional votes in the 2012 election. The average winning percentage in districts Democrats won was an astronomical 77.3%, reflecting the packing of Democrats into five districts. *Not a single winning Republican candidate* earned this large a share of the vote in his district. Victorious Republican candidates all won by much smaller margins, winning between 51.7% and 65.6% of the vote, for an average winning percentage of only 59.3%. In other words, the 2011 Plan guaranteed that Democrats would win a small number of House seats by very large margins, while Republicans would win the lion's share of seats by much smaller, although still comfortable, margins.

79.   Republican officials pointed out that the 2011 Plan enabled Republicans to win the Commonwealth's delegation even in years when Democrats outperformed them, boasting that Republicans had achieved a large majority of the congressional seats even as Democrats won the important state-wide races: "The impact of this investment at the state level in 2010 is evident when examining the results of the 2012 election: Pennsylvanians reelected a Democratic U.S. Senator by nearly 9 points and reelected President Obama by

more than 5 points, but at the same time they added to the Republican ranks in the

State House and returned a 13-5 Republican majority to the U.S. House."[13]

80.   In 2014, Republicans won 55.5% of the statewide congressional vote

and remained at 13 of 18 seats. Although the percentage of seats Republicans

won—72%—was still grossly disproportionate to their statewide vote share, it is

nonetheless telling that Republicans won an extra 6 percentage points of the

statewide congressional vote compared to 2012 but did not pick up any additional

House seats. That is because the 2011 Plan is utterly unresponsive to the will of

the voters. Democrats are locked into the 5 districts in which they are packed, and

therefore do not lose—and cannot gain—seats with any normal swing in the

statewide vote.

81.   In 2016, the results were almost identical. Republicans won 53.9% of

the statewide congressional vote and again won 13 of 18, or 72%, of the

congressional seats.

82.   In both the 2014 and 2016 elections, the margin of victory in districts

Democrats won was far higher than the margin of victory in districts Republicans

won; in 2014, the average vote share for successful Democratic candidates was

73.6%, as compared to 63.4% for successful Republicans candidates (excluding

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[13] *2012 REDMAP Summary Report*, The Redistricting Majority Project,
http://www.redistrictingmajorityproject.com/?cat=1 (last visited June 7, 2017).

uncontested elections), and for 2016 the average vote share was 74.2% for successful Democratic candidates and 61.1% for successful Republican candidates (excluding uncontested elections).

83.   That the 2011 Plan is the product of naked partisan gerrymandering is confirmed by any number of other measures. In recent years, political scientists and mathematicians have developed a number of sophisticated modeling techniques and tests to identify political gerrymanders. These tests each independently demonstrate the magnitude of the 2011 Plan's Republican bias, the fact that this bias could have resulted only from an intentional effort to benefit Republicans and to disadvantage Democrats.

84.   One recognized way to test whether the 2011 Plan is the product of partisan bias is to ask whether observing traditional redistricting criteria such as contiguity, compactness, equal population, and minimizing county splits could reasonably be expected to produce a plan that yields the results generated by the actual 2011 Plan. The answer is a resounding "no."

85.   Political scientists can answer this question by using computer modeling to generate alternative plans that adhere to traditional redistricting

criteria but do not aim to advance partisan goals.[14] These alternative plans thus account for natural factors affecting the distribution of voters across the Commonwealth, such as any clustering of voters of a particular party into particular areas.

86.   Performing this modeling for Pennsylvania congressional districts yields thousands of alternative plans that comply with traditional districting principles. But not one produces the partisan bias of the 2011 Plan. That is, using the *actual* voting results from past Pennsylvania statewide elections, and then interposing those voting results over the district boundaries in each alternative plan, not a single alternative plan produces a result in which Republicans would win a 13-5 advantage in Pennsylvania's congressional delegation. This modeling demonstrates, with statistical certainty, that the 13-5 Republican advantage under the 2011 Plan is not the result of neutral factors such as population clustering. Rather, the bias of the 2011 Plan is necessarily the result of an intentional effort to favor Republicans.

87.   Mathematicians at Carnegie Mellon University and the University of Pittsburgh have developed an alternative modeling approach that also demonstrates

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[14] *See, e.g.*, Jowei Chen, *The Impact of Political Geography on Wisconsin Redistricting*, 16 Election L.J. (forthcoming 2017), http://www.umich.edu/~jowei/Political_Geography_Wisconsin_Redistricting.pdf.

the partisan intent behind the 2011 Plan.[15] Using a modeling technique known as

"Markov chain" analysis, these mathematicians take the enacted plan as a starting

point and then make a series of random adjustments to the district boundaries by

swapping precincts, while maintaining districts that are contiguous, of equal

population, and as compact as the ones in the 2011 Plan. It can be proved

mathematically using this approach that if the enacted plan were drawn without

bias, these changes should not change the statistical properties of the plan. But the

professors find that random changes to the 2011 Plan greatly diminish the

Republican advantage. The professors conclude that the 2011 Plan has a

Republican bias that cannot be the result of external factors such as the political

geography of Pennsylvania.

    88.   Yet another statistical approach that measures partisan gerrymanders

is the efficiency gap. This measure, which the three-judge panel in *Whitford*

applied in striking down Wisconsin's state house districts, measures how

efficiently a party's voters are distributed across districts. For each party, the

efficiency gap calculates that party's number of "wasted" votes, defined as the

number of votes cast for losing candidates of that party (as a measure of cracked

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[15] Maria Chikinaa, Alan Friezeb & Wesley Pegden, *Assessing significance in a Markov chain without mixing*, 114 Proc. of Nat'l Acad. of Sci. 2860 (2017), *available with supplement at* https://www.math.cmu.edu/~af1p/Texfiles/outliers.pdf.

votes) plus the number of votes cast for winning candidates in excess of 50% (as a measure of packed votes). The lower each of these numbers, the fewer wasted votes and the more likely a party is to win additional seats. The efficiency gap equals the difference in the total wasted votes between the two parties, divided by the total number of votes cast in the election.

89.   The efficiency gap for Pennsylvania's congressional districts is enormous. For example, in the 2012 election, Democrats wasted 2,442,621 votes, compared to Republicans who wasted only 1,093,328 votes. The resulting efficiency gap of 24.5% was *the highest in the nation* among states that have more than two congressional districts. These figures demonstrate the massive number of Democrats in cracked districts who were deprived of the ability to elect officials of their choice, and the massive number of Democrats packed into districts where their votes were diluted.

90.   Another measure of partisan gerrymandering is the "mean-median gap." The measure looks at the Democratic vote share in each of Pennsylvania's 18 congressional districts and then calculates: (i) the average, or mean, of those 18 Democratic vote shares, which will be roughly equivalent to the Democratic vote share statewide; and (ii) the Democratic vote share in the district that was the middle-best in terms of Democratic performance, which because Pennsylvania has an even number of districts, is the average of Democrats' vote shares in the

districts where Democrats performed the ninth and tenth best out of the 18

districts. Gerrymandering does not impact the mean vote share, since that is a

statewide figure. But it does affect the median vote share, since gerrymandering is

designed to maximize the number of districts a party wins, and winning the median

district means that party wins a majority of seats. If, as in 2012, the Democratic

vote share in the median district is lower than the mean Democratic vote share

statewide, that necessarily indicates there are a disproportionately large number of

Democratic voters in a few, packed districts. And it indicates that it is more

difficult for Democrats to win the median district and hence a majority of seats: the

larger the mean-median gap, the greater the mean vote share across the state that

Democrats need to bring their vote share in the median district above 50%.

91. As illustrated below, in the 2012 election, the mean Democratic vote

share across all Pennsylvania districts was 50.46%, but the median Democratic

vote share was just 42.81% (the average of the 6th and 3rd Districts, which were

Democrats' ninth and tenth best districts). Accordingly, the mean-median gap was

7.65%, which was the fifth largest of all congressional slates in the country for the

2012 election. This gap shows the disproportionate percentage of the statewide

vote that Democrats would need to win a majority of congressional seats.

Democrats would have needed to win the 3rd District to win a majority of seats,

and Democrats would have needed to win an additional 7.2% of the vote there to win—even though Democrats already won over 50% of the vote statewide.

92.   Indeed, it would be nearly as difficult for Democrats to win just *two additional seats*. In 2012, Democrats would have needed to flip the 8th District to win two additional seats (*i.e.*, to win their seventh best district), but Democrats received just 43.4% share of the vote in the 8th District. These figures show how Republicans skewed the districts to maximize the numbers of seats they would win and render these seats immune from normal swings in the statewide vote.

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%**

93.   The mean-median gaps for the 2014 and 2016 held steady at roughly

the same levels. The mean-median gap was 7.46% for the 2014 election and

7.61% for the 2016 election, again showing the degree to which Democratic votes

are packed and cracked.[16]

94.   In short, a host of manageable tests, including the computer modeling

and statistical tests described above, demonstrate that the 2011 Plan was

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[16] These mean-median gaps were calculated by using actual vote totals from the 2014 and 2016 congressional elections, except in districts that were uncontested. Results in uncontested districts were imputed using a statistical regression model that predicts 2014 and 2016 election results based on each district's results in the 2012 congressional elections.

intentionally drawn to minimize the influence of Democratic voters, that it has had precisely that effect, and that it will continue to do so for the life of the plan.

95.   The effects of the gerrymander go beyond election results. In today's Congress, representatives are simply not responsive to the views and interests of voters of the opposite party. Regardless of whether gerrymandering has *caused* this increased partisanship, such extreme partisanship magnifies the *effects* of partisan gerrymandering. When voters lose the ability to elect representatives of their party as a result of gerrymandering, those voters lose not only electoral power, but also the ability to influence legislative outcomes—because representatives pay no heed to the views and interests of voters of the opposite party once in office.

96.   The increasing and extreme polarization of the U.S. House of Representatives is readily apparent. Numerous studies have documented this trend, including a 2015 article co-authored by Clio Andris from Pennsylvania State University.[17] Andris et al. gathered data for each Congress on the number of times each Member of Congress voted with every other Member. In the chart below, Andris et al. represent each Member with a red or blue dot and group the dots to show how often each pair of Members voted with one another; the closer two dots

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[17] *See* Clio Andris et al., *The Rise of Partisanship and Super-Cooperators in the U.S. House of Representatives*, PLOS One (2015).

are to one another, or the thicker the line connecting them, the more often those two Members voted with each other. The trend over time is remarkable. It shows that, in recent years, Members have voted almost exclusively with Members of the same party and rarely, if ever, have joined with representatives from the opposing party to vote on a bipartisan basis.

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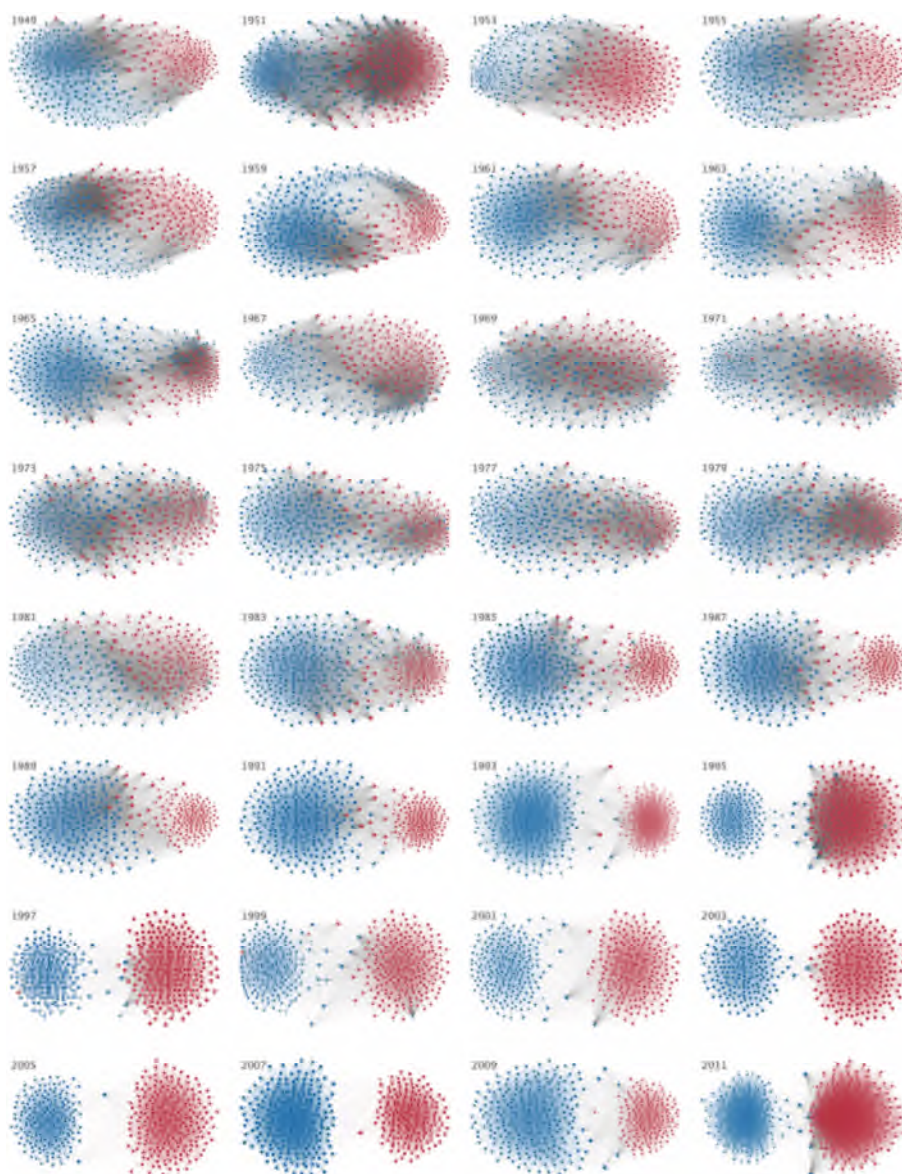
97.   The Members of Pennsylvania's Congressional delegation are no exception to this trend. As the chart below demonstrates, in the two Congresses following the 2011 Plan, these Members almost always voted with a majority of other members of the same party and rarely crossed over to vote with members of the other party.[18]

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[18] Data are from the Washington Post's "U.S. Congress Votes Database," http://projects.washingtonpost.com/congress/114/house/members/ (last visited June 12, 2017).

District	Representative(s)	Party	Voting with Majority of Same Party	
			112th Congress	113th Congress
1	Bob Brady	D	94%	93%
2	Chaka Fattah	D	95%	96%
3	Mike Kelly	R	93%	96%
4	Jason Altmire	D	64%	N/A
4	Scott Perry	R	N/A	95%
5	Glenn Thompson	R	91%	93%
6	Jim Gerlach	R	86%	91%
7	Patrick Meehan	R	86%	92%
8	Mike Fitzpatrick	R	81%	85%
9	Bill Shuster	R	94%	96%
10	Tom Marino	R	95%	95%
11	Lou Barletta	R	92%	95%
12	Mark Critz	D	77%	N/A
12	Keith J. Rothfus	R	N/A	96%
13	Allyson Schwartz	D	94%	95%
14	Mike Doyle	D	93%	95%
15	Charles W. Dent	R	86%	91%
16	Joe Pitts	R	95%	95%
17	Tim Holden; Matt Cartwright	D	76%	96%
18	Tim Murphy	R	93%	96%

98.   These figures illustrate that when voters artificially lose the ability to elect representatives of their party, they also lose any chance of having their views represented in Congress.

COUNT I
Violation of the Pennsylvania Constitution's
Free Expression and Association Clauses, Art. I, §§ 7, 20

99.   Petitioners hereby incorporate Paragraphs 1 through 98 above as if they were fully set forth herein.

100.   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."

101.   Article I, Section 20 provides: "The citizens have a right in a peaceable manner to assemble together for their common good . . . ."

102.   Pennsylvania's constitution "provides protection for freedom of expression that is broader than the federal constitutional guarantee." *Pap's A.M. v. City of Erie*, 812 A.2d 591, 605 (Pa. 2002). This "broader protection[] of expression than the related First Amendment guarantee" applies "in a number of different contexts," including "political" contexts. *DePaul v. Commonwealth*, 969 A.2d 536, 546 (Pa. 2009) (citing *Commonwealth v. Tate*, 432 A.2d 1382, 1391 (Pa. 1981)).

103.   Pennsylvania's Constitution protects the right of voters to participate in the political process, to express political views, to affiliate with or support a political party, and to cast a vote.

104.   The 2011 Plan has the purpose and the effect of subjecting Petitioners and other Democratic voters to disfavored treatment by reason of their political views, their votes, and the party with which they choose to associate.

105.   The Pennsylvania General Assembly expressly and deliberately considered the political views, voting histories, and party affiliations of Petitioners and other Democratic voters when it created the 2011 Plan.

106.   The General Assembly drew the 2011 Plan with the intent to burden and disfavor those voters, including Petitioners, by reason of conduct protected by Article I, Sections 7 and 20, and with the intent to burden forms of expression that are protected by those provisions.

107.   The Plan has had the effect of burdening and disfavoring Democratic voters in Pennsylvania, including Petitioners, by reason of their constitutionally-protected conduct. The Plan has prevented Democratic voters from electing the representatives of their choice and from influencing the legislative process, and the Plan has the effect of suppressing the political views and expression of Democratic voters. By contrast, the Plan favors Republican voters, by ensuring that they will be able to associate with fellow Republican voters to elect the representatives of their choice and to influence the electoral, and thus political, process.

108.   The Plan also violates the Pennsylvania Constitution's prohibition against retaliation against individuals who exercise their rights under Article I,

Section 7, and Article I, Section 20. Republicans "penalize[d] [Petitioners] for expressing certain preferences, while, at the same time, rewarding other voters for expressing the opposite preferences." *Shapiro v. McManus*, 203 F. Supp. 3d 579, 595 (D. Md. 2016).

109.   For instance, Petitioner Mary Elizabeth Lawn has resided at the same home in Chester since 2004, but her congressional district was changed under the 2011 Plan. Lawn previously was in the 1st Congressional District, which has consistently elected Democrats, but under the 2011 Plan, Lawn was moved to the 7th Congressional District, which has voted for Republicans by comfortable margins in every election since the redistricting.

110.   Petitioner John Greiner's District, the 3rd Congressional District, was subject to cracking under the 2011 Plan. The 3rd District previously was a competitive district: Republicans won in 2002, 2004, 2006, and 2010, while Democrats won in 2008. But since the 2011 Plan, the district is no longer competitive. The Republican representative, Mike Kelly, comfortably won reelection in 2014 and 2016, and the district is so skewed that Kelly was able to run unopposed in 2016.

111.   Like Greiner, Petitioner Robert Smith was also subject to cracking. Smith resides in Pennsylvania's 11th Congressional District. Prior to the 2011 Plan, the 11th District was a competitive district: the Democratic candidate won by

a mere 3% in 2008, and the Republican candidate won the seat in 2010. But since

the 2011 Plan, the Republican Representative, Lou Barletta, has won every

election by more than 17%.

112.   With respect to each of these Petitioners and others, Republicans

"expressly and deliberately considered [their] protected . . . conduct, including

their voting histories and political party affiliations, when it redrew the lines of"

their districts. *Shapiro*, 203 F. Supp. 3d at 595. And Republicans "did so with an

intent to disfavor and punish [Petitioners] by reason of their constitutionally

protected conduct." *Id.* This intentional retaliation had an "actual effect" that

would not have occurred but-for the retaliation. *Id.* Petitioners such as Lawn,

Greiner, and Smith are no longer able to elect representatives of their choice or to

influence the political process.

113.   The 2011 Plan cannot be explained or justified by reference to

Pennsylvania's geography or other legitimate redistricting criteria.

COUNT II
Violation of the Pennsylvania Constitution's
Equal Protection Guarantees, Art. I, §§ 1 and 26, and Free and Equal Clause,
Art. I, § 5,

114.   Petitioners hereby incorporate Paragraphs 1 through 113 above as if

they were fully set forth herein.

115.   The General Assembly is not "free to construct political gerrymanders

with impunity." *Erfer*, 794 A.2d at 334. On the contrary, a congressional

redistricting plan violates the Pennsylvania Constitution's equal protection

guarantees if (1) the plan reflects "intentional discrimination against an identifiable

political group"; and (2) "there was an actual discriminatory effect on that group."

Id. at 332; *see also Whitford*, 218 F. Supp. 3d 837 (finding equal protection

violation in Wisconsin redistricting where there was both discriminatory purpose

and effects).

116.   Here, the enacted plan reflects intentional discrimination against an

identifiable political group—that is, Petitioners and other Democratic voters.

Pennsylvania's congressional districts were drawn as part of a nationwide

movement to use redistricting to maximize Republican seats in Congress and

entrench these Republican members in power. Analyses such as the computer

modeling of districts that would observe traditional districting criteria, the Markov

Chain analysis, and the efficiency and mean-median gaps leave no room for doubt

on this score. They conclusively demonstrate that the 2011 Plan could not have

resulted "legitimate legislative objective[s]," *Vieth*, 541 U.S. at 307 (Kennedy, J.,

concurring in judgment), but could have resulted only from discriminatory partisan

intent.

117.   The enacted plan also works an actual discriminatory effect. A plan

works such an effect when (1) "the identifiable group has been, or is projected to

be, disadvantaged at the polls"; and (2) "by being disadvantaged at the polls, the

identifiable group will lack political power and be denied fair representation."

Erfer, 794 A.2d at 332. Here, the enacted plan disadvantages Petitioners and other

Democratic voters at the polls and severely burdens their representational rights.

118. Statewide, the computer modeling and statistical tests demonstrate

that Democrats receive far fewer congressional seats than they would absent the

gerrymander, and that Republicans' advantage is nearly impossible to overcome.

Indeed, one need look only at the results of the 2012 election to see the effects of

the gerrymander: Democrats won only 28% of Pennsylvania's seats despite

winning a majority of the statewide congressional vote.

119. The effects are likewise significant for individual voters. For

Petitioners such as James Greiner and Robert Smith who live in cracked districts,

these voters are "essentially shut out of the political process." *Erfer*, 794 A.2d at

333 (citation and quotation marks omitted). They are artificially denied any

realistic opportunity to elect representatives of their choice, with the demographics

of their districts skewed to ensure Republican victories. And given the extreme

partisanship of their representatives, these voters have no meaningful opportunity

to influence legislative outcomes. Their representatives simply do not weigh

Democratic voters' interests and policy preferences in deciding how to act.

120. For Petitioners such as Carmen Febo San Miguel and James Solomon

who live in packed Democratic districts, the "weight" of their votes has been

substantially diluted. *See Reynolds v. Sims*, 377 U.S. 533, 563 (1964). Their votes have no marginal impact on election outcomes, and representatives will be less responsive to their individual interests or policy preferences.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against Respondents, and:

a. Declare that the 2011 Plan is unconstitutional and invalid because it violates the rights of Petitioners and all Democratic voters in Pennsylvania under the Pennsylvania Constitution's Free Expression and Association Clauses, Art. I, §§ 7, 20; Equal Protection Guarantees, Art. I, §§ 1 and 26, and Free and Equal Clause, Art. I, § 5.

b. Enjoin Respondents, their agents, officers, and employees from administering, preparing for, or moving forward with any future primary or general elections of Pennsylvania's U.S. house members using the 2011 Plan;

c. Establish a new congressional districting plan that complies with the Pennsylvania Constitution, if Respondents fail to enact a new congressional districting plan comporting with the Pennsylvania Constitution in a timely manner;

d. Enjoin the Pennsylvania General Assembly from creating any future congressional districts with the purpose or effect of burdening or penalizing an identifiable group, a political party, or individual voters based on their political beliefs, political party membership, registration, affiliations or political activities, or voting histories;

e. Enjoin the Pennsylvania General Assembly from using data regarding a voter's political party membership, registration, affiliation, political activities, or voting history in any future redistricting process of congressional districts, where such use burdens or penalizes an identifiable group, a political party, or individual voters based on their political beliefs, political-party membership, registration, affiliations or political activities, or voting histories.

Dated: June 15, 2017

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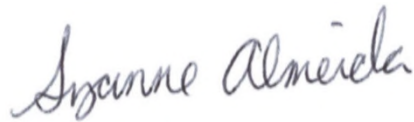Counsel for Petitioners

Appendix
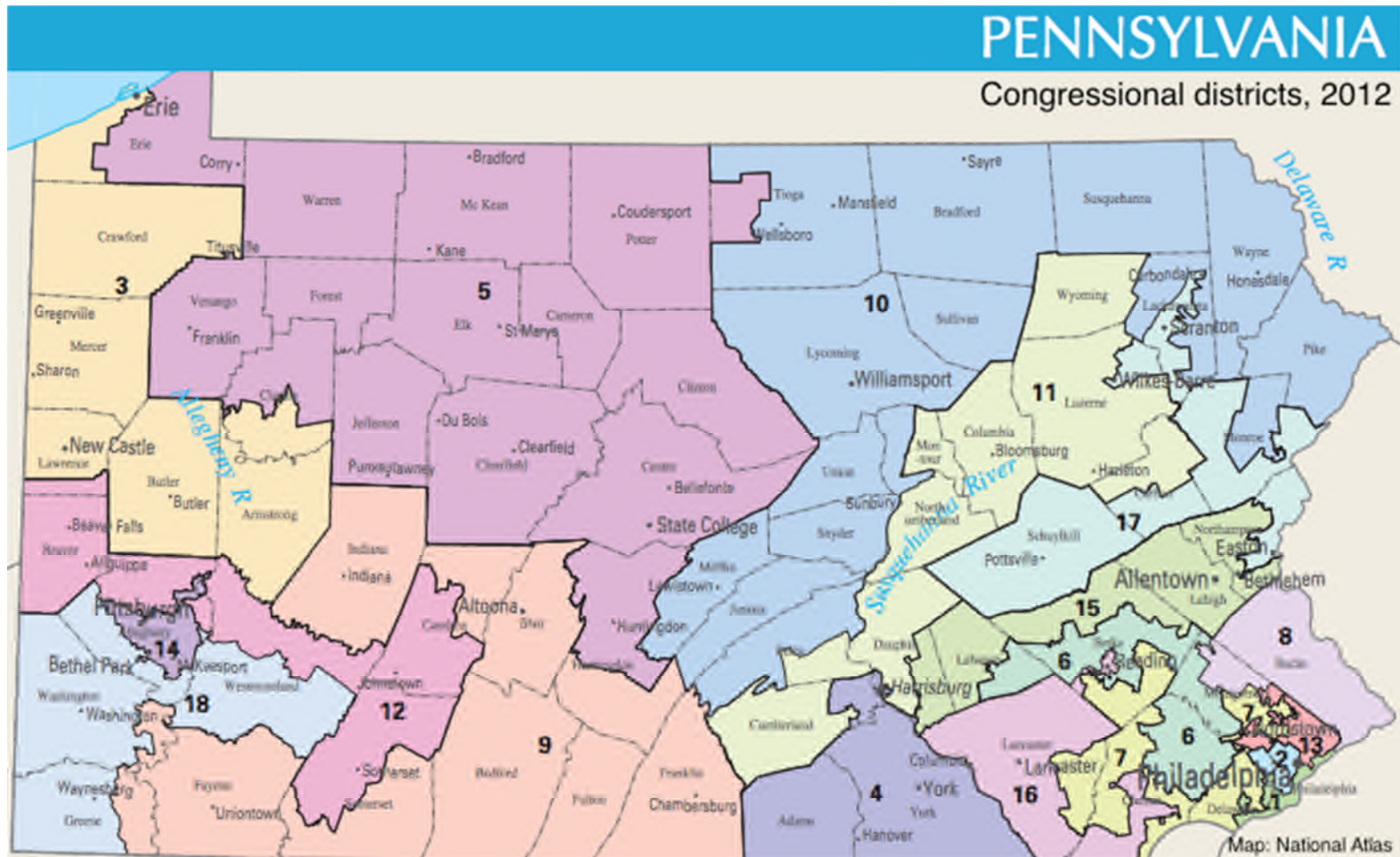
VERIFICATION

I, _Suzanne Almeida, on behalf of the League of Women Voters of

Pennsylvania, hereby state:

1. I am a petitioner in this action;

2. I verify that the statements made in the foregoing Petition for Review are

    true and correct to the best of my knowledge, information, and belief; and

3. I understand that the statements in said Petition for Review are subject to

    the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to

    authorities.

Signed: _____

Dated: _June 14, 2017_____