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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA; 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.

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.

No. 132 MD 2021

PETITIONERS' MEMORANDUM IN OPPOSITION TO RESPONDENTS' PRELIMINARY OBJECTIONS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION

Over the course of the past decade, Pennsylvania's population has changed—in size, in distribution across the state, and in growth rate compared to other parts of the country. As a result, as confirmed by the 2020 census, Pennsylvania's congressional districts are badly malapportioned, which has been exacerbated by the Commonwealth's loss of one congressional seat. And because the U.S. Constitution indisputably prohibits malapportioned districts, continued use of Pennsylvania's present congressional map is unconstitutional. The possibility that the General Assembly *might* enact a new map does not render the Petition nonjusticiable.

This is because Pennsylvanians face a real and substantial risk that the legislative process—assuming one occurs—will not produce a constitutional plan, as the Commonwealth's political branches are deeply divided along partisan lines. Even Respondents acknowledge that the forecast for the branches settling on a map that is acceptable to both the Republican-controlled General Assembly and the Democratic governor is "stormy." Respondents' Preliminary Objections ("Prelim. Objs.") at 2. The last time Pennsylvania began a redistricting cycle when its political branches were as politically divided as they are now, those branches failed to enact a congressional redistricting plan in time for the next elections, forcing Pennsylvania's judiciary to take responsibility for implementing a new plan. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992). Accordingly, to secure their

constitutional rights, Petitioners, who live in congressional districts that are currently malapportioned, filed the instant case to ensure a new congressional map would be drawn as soon as practicable and, at least, in time for the 2022 primary elections.

This Court, like courts across the country that routinely provide similar relief during each redistricting cycle, should implement a plan to approve a constitutional map if the General Assembly and Governor fail timely to do so in the first instance. For example, in *Arrington v. Elections Board*, 173 F. Supp. 2d 856 (E.D. Wis. 2001), a three-judge federal court panel held that a similar complaint filed in early 2001, shortly after the release of 2000 census apportionment numbers, met all the requirements of Article III jurisdiction. *Id.* at 859. And this cycle, the Minnesota Supreme Court has already taken steps to adjudicate lawsuits alleging impasse. *See* Order at 1-2, *Sachs v. Simon*, No. A21-0546 (Minn. May 20, 2021); Order at 1-3, *Wattson v. Simon*, No. A21-0243 (Minn. Mar. 22, 2021).

Respondents provide no compelling argument against justiciability. The current controversy is live, and courts must provide the necessary backstop to avoid the harms that follow from the likely impasse between the political branches.

Respondents' Preliminary Objections should be overruled.

BACKGROUND

On April 26, 2021, the same day the Census Bureau publicly released its apportionment counts, Petitioners filed this action in the Commonwealth Court. The

2020 census confirmed that, as a result of significant population shifts in the past decade, Pennsylvania's congressional districts are now unconstitutionally malapportioned. *See* Pet. ¶¶ 22-28. Reapportionment of Pennsylvania's congressional districts is therefore required.

Pennsylvania law provides that the state's congressional district plan be enacted through legislation, which must pass both chambers of the General Assembly and be signed by the Governor (unless both chambers override the Governor's veto by a two-thirds vote). *Id.* ¶ 6 (citing Pa. Const., Art. III, § 5 & Art. IV, § 15). Consequently, the redistricting needed to alleviate the constitutional injury of malapportionment faces a significant obstacle: partisan deadlock. The Republican Party currently controls both legislative chambers, but it lacks the supermajority necessary to override a veto from the Democratic governor. *Id.* ¶¶ 7, 29. This partisan divide makes it extremely unlikely that the branches will pass a lawful congressional redistricting plan in time to be used for the upcoming 2022 congressional elections—let alone before February 15, 2022, the date that congressional candidates may start circulating nomination papers for party primaries, *id.* ¶ 31 (citing 25 P.S. § 2868). Respondents themselves assert that "the Department of State must receive a final and legally binding congressional district map no later than January 24, 2022," which now is fewer than six months away. Prelim. Objs. ¶ 15.

The last time a redistricting cycle coincided with a period of divided government in Pennsylvania, the political branches failed to enact a congressional redistricting plan in time for the next elections, forcing Pennsylvania's judiciary to delay the nominating timeline for congressional candidates and implement a new plan. *See Mellow*, 607 A.2d at 204. Despite Respondents' optimistic but unsupported allegation that Pennsylvania courts may review challenges and approve a final map over the course of just three weeks, Prelim. Objs. ¶ 17, the judicial process in *Mellow* took six weeks from the day that the Commonwealth Court took jurisdiction to the Supreme Court of Pennsylvania's approval of the new map, 607 A.2d at 205-06. Two more weeks passed before the Supreme Court issued a written opinion, *see id.*, followed by another few weeks of federal court challenges that led right up to the April 1992 primary. *See Valenti v. Mitchell*, 962 F.2d 288 (3d Cir. 1992).

This year's redistricting timeline is uniquely compressed due to pandemic-related delays in the delivery of 2020 census data. By mid-to-late August 2021, the U.S. Secretary of Commerce will deliver to the state its redistricting data file in a legacy format, which Pennsylvania can use to tabulate the new population of each political subdivision. Pet. ¶ 23. On or around September 30, 2021, the U.S. Secretary of Commerce will deliver to Pennsylvania that same detailed population data showing the new population of each political subdivision in a tabulated format. *Id.* These data—commonly referred to as "P.L. 94-171 data" in reference to the 1975

legislation that first required this process—are typically delivered no later than *April* of the year following the decennial census. *Id*. Redistricting thus usually begins months before it will begin this year.

Still, in 2011, when Republicans held control of state government and received the relevant data on time, the congressional district map was not signed into law until December 22, 2011, Prelim. Objs. ¶ 18 (citing *League of Women Voters v. Commonwealth*, 178 A.3d 737, 743-44 (Pa. 2018)), mere weeks before Respondents' own January deadline for all challenges to be resolved and a final congressional map adopted. The delays in data delivery and imminent risk of impasse this year, combined with what is already a lengthy and divisive process even under the most favorable circumstances, begs this Court's prompt intervention. Indeed, the Minnesota Supreme Court has already asserted jurisdiction in similar lawsuits alleging legislative deadlock, including in a case that was filed two months before the release of U.S. Census data in April. *See* Order at 1-2, *Sachs*, No. A21-0546 (Minn. May 20, 2021); Order at 1-3, *Wattson*, No. A21-0243 (Minn. Mar. 22, 2021).

Petitioners are registered Pennsylvania voters who reside in now-overpopulated congressional districts and are consequently "deprived of the right to cast an equal vote, as guaranteed to them by the U.S. Constitution and the Pennsylvania Constitution." Pet. ¶¶ 11-12. The present malapportionment and

likelihood of impasse additionally infringes on Petitioners' rights to associate with fellow voters and engage in the business of electing representatives. Pet ¶¶ 49-52. Just as in *Mellow*, Petitioners in this action ask the Court "to declare Pennsylvania's current congressional district plan unconstitutional; enjoin Respondents from using the current plan in any future elections; [and] implement a new congressional district plan that adheres to the constitutional requirement of one-person, one-vote should the General Assembly and Governor fail to do so." Pet. ¶ 1.

LEGAL STANDARD

Under Pennsylvania law, preliminary objections should be sustained "only when, based on the facts pleaded, it is clear and free from doubt that the complainant will be unable to prove facts legally sufficient to establish a right to relief." *Kuren v. Luzerne Cty.*, 146 A.3d 715, 718 n.1 (Pa. 2016) (quoting *Mazur v. Trinity Area Sch. Dist.*, 961 A.2d 96, 101 (Pa. 2008)). In conducting its review, the Court must "accept as true all well-pleaded material facts set forth in the [petition for review] and all inferences fairly deducible from those facts." *Id.*; *Yocum v. Commonwealth Pennsylvania Gaming Control Bd.*, 161 A.3d 228, 237 (Pa. 2017) (applying the same standard in considering preliminary objections based on standing and ripeness). The Court must overrule objections to a plaintiff's complaint if the complaint pleads sufficient facts which, if believed, would entitle the plaintiff to the relief sought. *Wilkinsburg Police Officers Ass'n v. Commonwealth*, 636 A.2d 134, 137 (Pa. 1993).

ARGUMENT

Respondents cite two related doctrines—standing and ripeness—to suggest that the Petition is not justiciable, but neither prevents this Court from hearing this case. Simply put, Pennsylvania's current congressional districts, adopted by court order in 2018 based on 2010 population data, are unconstitutionally malapportioned, as confirmed by the U.S. Secretary of Commerce's release of preliminary census data on April 26, 2021. That the legislative process *might* yield a new map—which Petitioners allege is highly unlikely due to entrenched political divisions—does not erase the fact that Petitioners are currently living in overpopulated districts. And the Court need not wait until the eve of an unconstitutional election before remedying Petitioners' injuries. Regardless of this Court's exercise of jurisdiction, the General Assembly and the Governor remain free to enact a new congressional plan. Although the Court must prepare for the likely impasse, it need only take charge of the redistricting process in the event that the other branches fail—a common process that is repeated throughout the United States during every redistricting cycle, and one that is necessary to prevent the violation of Petitioners' right to an equal, undiluted vote. In other words, allowing this case to go forward does not impede that political process in any way. But at this juncture and under these circumstances, if the Court does not press forward and the political process fails (as it is highly likely

to do), the result will be the clear and severe violation of Petitioners' constitutional rights.

I. The Petition presents a justiciable case or controversy.

Respondents wrongly claim that Petitioners lack standing and bring unripe claims because it is not currently known with complete certainty that the political branches will deadlock and fail to pass a congressional redistricting plan. This argument misses the point—and the relevant legal prerequisite for both standing and ripeness, which, as Respondents agree, is "the presence of an actual controversy." Prelim. Objs. ¶ 28; *Bayada Nurses, Inc. v. Dep't of Labor and Indus.*, 8 A.3d 866, 874 (Pa. 2010).

There can be no dispute that continuation of the status quo is unconstitutional. Article I, Section 2 of the United States Constitution requires congressional districts to be as equivalent in population as possible "to prevent debasement of voting power and diminution of access to elected representatives." *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969). This constitutional mandate is commonly referred to as the "one-person, one-vote principle." *Gray v. Sanders*, 372 U.S. 368, 381 (1963). The census data released on April 26, 2021, make clear that the configuration of Pennsylvania's congressional districts does not account for the current population numbers in the state, violating the "Constitution's plain objective of [] equal representation for equal numbers." *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964); *see*

also Pet. ¶ 17; *Arrington*, 173 F. Supp. 2d at 860 ("[A]pportionment schemes become 'instantly unconstitutional' upon the release of new decennial census data." (quoting Pamela S. Karlan, *The Right to Vote: Some Pessimism about Formalism*, 71 Tex. L. Rev. 1705, 1726 (1993))).

While it is *possible* that the political branches might come to an agreement and enact a new plan, that prospect does not change the fact that the existing plan is malapportioned. Moreover, if the Court were to dismiss this action now and accept jurisdiction only once impasse had occurred, then there would be no time for it to undertake the complicated work of crafting the necessary remedy.

Given Petitioners' allegation of likely impasse, a reasonable inference supported by facts which this Court must accept as true at the pleadings stage, there can be no question that Petitioners' dispute with Respondents is "real and concrete," *Com., Off. of Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014), and there is no risk of this Court "render[ing a] decision[] in the abstract or offer[ing a] purely advisory opinion[]," *Pittsburgh Palisades Park, LLC v. Com.*, 888 A.2d 655, 659 (Pa. 2005). Contrary to Respondents' intimations, "[o]ne does not have to await the consummation of threatened injury to obtain preventive relief," *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)—especially in a case involving the unconstitutional dilution of an individual's vote. *See Lucas v. Forty-Fourth Gen. Assembly*, 377 U.S. 713, 736 (1964) ("[I]ndividual constitutional rights cannot be

deprived, or denied judicial effectuation, because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment, which the individual voters seek, might be achieved.").[1] Instead, Petitioners need only "demonstrate a realistic danger of sustaining a direct injury." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979); *see also Fed. Election Comm'n v. Akins*, 524 U.S. 11, 25 (1998) (recognizing that voting is "the most basic of political rights" and finding that in voting rights cases a minimal quanta of injury satisfies the injury in fact requirement). Moreover, Pennsylvania's Declaratory Judgments Act "is declared to be remedial . . . and is to be liberally construed and administered." 42 Pa. C.S. § 7541(a); *see Bayada Nurses, Inc.*, 8 A.3d at 874 (explaining that although the "real or actual controversy" requirements, including standing, ripeness, and

[1] "Pennsylvania courts have frequently found the extensive body of federal decisions helpful in addressing standing and other prudential considerations." *Rendell v. Pa. State Ethics Comm'n*, 983 A.2d 708, 717 (Pa. 2009). Nevertheless, "[i]n contrast to the federal approach, notions of case or controversy and justiciability in Pennsylvania have no constitutional predicate, do not involve a court's jurisdiction, and are regarded instead as prudential concerns implicating courts' self-imposed limitations." *Robinson Twp., Wash. Cty. v. Com.*, 83 A.3d 901, 917 (Pa. 2013) (citations omitted). Therefore, if anything, the standards for adjudicating justiciability in Pennsylvania courts are less rigid than their federal counterparts. *See* G. Ronald Darlington et al., *20 West Pennsylvania Appellate Practice Series*, § 501:15, at 803 (2015-16 ed.) (footnotes omitted) ("In light of the 'requirement of standing under Pennsylvania law [being] prudential in nature,' Pennsylvania decisional law is somewhat unclear in distinguishing a plaintiff who has been adversely affected and a plaintiff who is merely asserting interests common to all citizens in procuring obedience to the law. The result is a very flexible, if not amorphous, concept of standing to sue.").

mootness, still apply, "the [Declaratory Judgments Act] was designed to curb the courts' tendency to limit the availability of judicial relief to only cases where an actual wrong has been done or is imminent" (citing *Kariher's Petition*, 131 A. 265, 268 (1925)).

Given the significant threat that the political branches will fail to agree to a new, constitutional plan in time for next year's elections, there is a substantial risk that Petitioners' votes will be unconstitutionally diluted in the upcoming congressional election. It is therefore unsurprising that the Minnesota Supreme Court has already put the gears of judicial redistricting into motion under similar circumstances. Like Pennsylvania, Minnesota currently has a divided government, creating a high risk of an irreparable impasse between the political branches—and a consequent failure to enact constitutionally apportioned maps in time for next year's elections. Recognizing the need to prepare for judicial intervention, the Minnesota Supreme Court asserted jurisdiction in two lawsuits that alleged legislative deadlock, including one that was filed two months *before* the release of census data in April. *See* Order at 1-2, *Sachs*, No. A21-0546 (Minn. May 20, 2021); Order at 1-3, *Wattson* (Minn. Mar. 22, 2021). Although the Minnesota Supreme Court initially imposed a short stay, it sua sponte lifted the stay one month ago and appointed a special redistricting panel to "order implementation of judicially determined redistricting plans for state legislative and congressional seats that satisfy constitutional and

statutory requirements in the event that the Legislature and the Governor have not done so in a timely manner," noting that the panel's "work . . . must commence soon in order to permit the judicial branch to fulfill its proper role in assuring that valid redistricting plans are in place for the state legislative and congressional elections in 2022." Order at 2, *Wattson v. Simon*, Nos. A21-0243, A21-0546 (Minn. June 30, 2021). Since then, the panel has addressed various procedural issues, such as allowing one set of plaintiffs to add a new plaintiff, setting a briefing schedule and hearing date on pending motions for intervention, and granting *pro hac vice* motions, and announced "a series of public hearings in person around the state between October 11, 2021 and October 20, 2021" to "foster robust and diverse input" and give the public "the opportunity to provide the panel with facts, opinions, or concerns that may inform the redistricting process." Scheduling Order No. 1 at 2-3, *Wattson v. Simon*, Nos. A21-0243, A21-0546 (Minn. Spec. Redistricting Panel July 22, 2021).

"No right is more precious in a free country than that of having a voice in the election of those who make the laws." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The Court should reject Respondents' position that it cannot assert jurisdiction in this case until the legislative process has *actually failed* to produce a new plan. Instead, like the Minnesota courts, this Court should take immediate steps to prepare

for political deadlock and the need for judicial intervention in the redistricting process.

A nearly identical case, *Arrington v. Elections Board*, 173 F. Supp. 2d 856 (E.D. Wis. 2001), is instructive here. *Arrington*, like the Petition, was filed shortly after the release of U.S. Census data identifying the number of congressional seats each state would be allotted, prior to the release of tabulated data used to draw districts. *Id.* at 858. Like Petitioners here, the *Arrington* plaintiffs resided in a state that lost a district and in districts that had become overpopulated, leaving plaintiffs "particularly under-represented in comparison with residents of other districts." *Id.* at 859. The *Arrington* plaintiffs sought the same relief Petitioners seek here: (1) a declaration that the then-existing districts were unconstitutional; (2) an injunction against the map's use in future elections; and, (3) *if* the political process did not yield a new plan, judicial intervention to implement a constitutional map. *Id*. The *Arrington* court declined to "dismiss the plaintiffs' complaint and wait to see if the legislature enacts its own districting plan in a timely fashion," *id*. at 865, as Respondents urge here.

Instead, the *Arrington* court found "that the complaint as filed does present a justiciable case or controversy," recognizing that "challenges to districting laws may be brought immediately upon release of official data showing district imbalance—that is to say, '*before* reapportionment occurs.'" *Id.* at 860 (quoting Karlan, 71 Tex.

L. Rev. at 1726). Courts routinely are called upon in situations like this one, and the U.S. Supreme Court has repeatedly recognized that courts must act in these circumstances. As the Court explained five decades ago,

> [w]hile a court sitting as a court of equity might be justified in temporarily refraining from the issuance of injunctive relief in an apportionment case in order to allow for resort to an available political remedy. . . individual constitutional rights cannot be deprived, or denied judicial effectuation, because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment, which the individual voters seek, might be achieved.

Lucas, 377 U.S. at 736. This need for proactive judicial action in these cases is underscored by the dire consequences that result from a failure to timely redistrict: once an election has come and gone, and Petitioners' votes have been diluted, their injuries cannot be "undone through monetary remedies." *Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2010) ("A restriction on the fundamental right to vote therefore constitutes irreparable injury.").

Like the *Arrington* court and the Minnesota Supreme Court just months ago, this Court should retain jurisdiction and "establish, under its docket-management powers, a time when it [will] take evidence and adopt its own plan if the legislature had by then failed to act." 173 F. Supp. 2d at 865.[2]

[2] Such action would not be unprecedented in the Commonwealth. In *Mellow*, the last Pennsylvania redistricting impasse suit litigated amid a government split along

II. Petitioners otherwise have standing.

Despite Respondents' assertion that Petitioners' injuries are too speculative, Petitioners allege all that is necessary to establish justiciability under Pennsylvania's standing requirements. "For standing to exist, the underlying controversy must be real and concrete, such that the party initiating the legal action has, in fact, been 'aggrieved.'" *Com., Off. of Governor*, 98 A.3d at 1229 (quoting *Pittsburgh Palisades Park*, 888 A.2d at 659); *see supra* Part I & n.1. "A party is aggrieved for purposes of establishing standing when the party has a substantial, direct and immediate interest in the outcome of litigation." *Id.* (citations and quotations omitted). Respondents take issue with only the final requirement—that of immediacy, which exists "when the causal connection with the alleged harm is neither remote nor speculative." *Id.* (citation omitted); Prelim. Objs. ¶¶ 32, 35.

Once again, *Arrington* is instructive in showing that Petitioners' interest is indeed immediate. That court rejected the same argument Respondents make here:

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partisan lines, Judge Barry of the Commonwealth Court "provided notice that the Court would select a plan if the Legislature failed to act by February 11, 1992." 607 A.2d at 205. When the General Assembly did in fact fail to act by the court's deadline, the Commonwealth Court moved forward in selecting a reapportionment plan. On appeal, and over the General Assembly's protest, the Pennsylvania Supreme Court explained "Judge Craig was absolutely correct in adhering to the pre-announced deadline of February 11," in the event that the General Assembly failed to act by then. *Id.* at 206. As the Pennsylvania Supreme Court explained, allowing the Commonwealth to continue into primary election season without a constitutional apportionment plan would cause nothing but "chaos." *Id.* at 211.

that the case should be dismissed for lack of standing because the possibility remained open that the state legislature would enact a new plan and remedy the plaintiffs' injury. *Arrington*, 173 F. Supp. 2d at 860-62. The court's decision was driven by the fact that the plaintiffs alleged—just as Petitioners do here—that they would be injured if the map remained as it was when the suit was filed, and that there was no reasonable prospect that the state legislature would enact a new plan due to a partisan division between the state's political branches. *Compare id.*, *with* Pet. ¶¶ 4, 27-28. The *Arrington* court concluded that the plaintiffs' allegations of impasse (a "threat" to their voting rights) were "not unrealistic" based in part on the fact that 12 of the 43 states that needed to redistrict during the prior cycle failed to legislatively enact congressional redistricting plans. 173 F. Supp. 2d at 862; *see also Babbitt*, 442 U.S. at 298 ("A plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury."). Ultimately, the fact that the political branches' actions *could* have prevented the plaintiffs' claimed injury was "irrelevant" to the *Arrington* court's conclusion that plaintiffs had standing, because they had "realistically allege[d] actual, imminent harm." 173 F. Supp. 2d at 862.

Just as in *Arrington*, the partisan division between the General Assembly and the Governor precludes any reasonable prospect that the political process will timely yield a reapportionment plan in Pennsylvania ahead of the 2022 congressional elections. The General Assembly is controlled by Republicans who lack the

supermajority necessary to override a veto from the Governor, a Democrat. *See* Pet. ¶¶ 7, 29.[3] To make matters worse, the delays caused by the COVID-19 pandemic have compressed the timeline during which redistricting can take place, *see* Pet. ¶ 33, further increasing the already significant likelihood the political branches will reach an impasse this cycle and fail to enact a new congressional district plan.[4]

Moreover, Petitioners do not allege only a vote dilution injury; until a lawful congressional map is in place, such that candidates can prepare to run in appropriate districts, Petitioners cannot "assess candidate qualifications and positions, organize and advocate for preferred candidates, and associate with like-minded voters." Pet. ¶ 51. Petitioners thus face a constitutional injury that readily satisfies basic principles

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[3] The 2010 redistricting cycle demonstrates the debilitating effect partisan divides can have on the reapportionment process. Of the ten states with divided government control of redistricting, *six*—Colorado, Minnesota, Mississippi, Nevada, New Mexico, and New York—required courts to draw congressional maps, legislative maps, or both.

[4] Respondents point to two recent election-related statutes, Act 77 of 2019 and Act 12 of 2020, passing with bipartisan support to suggest that the political process may ultimately yield timely and constitutional maps. Prelim. Objs. at ¶ 10. But even setting aside the fact that this Court taking jurisdiction would not prevent the political branches from reaching an agreement on congressional maps, *see supra*, redistricting is both highly politicized, *see League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 426-27 (Fla. 2015) ("[T]o the political parties [redistricting] is a high stakes proposition, a zero sum game in which one party wins and the other loses—for years to come."), and highly truncated and therefore does not lend itself to comparisons to legislation passed in the typical course. Indeed, both Act 77 and Act 12 took more time from introduction to passage (more than seven months and one year, respectively) than would be allotted to any redistricting legislation, which must be passed in fewer than five months by constitutional imperative and Respondents' own account. *See* Prelim. Objs. at ¶¶ 13-17.

of procedure and equity, as well as a present and ongoing injury to their associational rights. *Anderson v. Celebrezze*, 460 U.S. 780, 787-88 (1983) ("The [absence] of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens."). This injury should not be needlessly prolonged. To avoid such an unconstitutional outcome, this Court must intervene to ensure Petitioners' and other Pennsylvanians' voting strength is not diluted.

III. Petitioners' claims are ripe.

Likewise, Petitioners' claims are ripe for this Court's adjudication. Ripeness, which "overlaps substantially with standing," *Rendell*, 603 Pa. at 308, similarly requires "the presence of an actual controversy." *Bayada Nurses, Inc.*, 8 A.3d at 874; *see supra* Part I & n.1. In determining whether a particular matter is ripe, courts "generally consider whether the issues are adequately developed and the hardships that the parties will suffer if review is delayed." *Id.* (quoting *Twp. of Derry v. Pa. Dep't of Labor & Indus.*, 932 A.2d 56, 60 (Pa. 2007)).

In *Arrington*, the court found that the plaintiffs' claims were ripe for review, highlighting that "contingent future events generally do not deprive courts of jurisdiction." 173 F. Supp. 2d at 863 (citing *Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 142 (1974)). In doing so, the court also noted that the plaintiffs alleged

associational harms that manifested long before an election, preventing them from influencing members of Congress, contributing to candidates, and more—just as Petitioners do here. *Compare id.* at 863 n.13, *with* Pet. ¶ 51; *see also Arrington*, 173 F. Supp. 2d at 865 ("[W]ho is to say when a citizen (especially a potential candidate) must start preparing for [the primary elections]?").

Further, the court rejected a ripeness argument on the ground that the mere possibility of legislative action did "not contradict the plaintiffs' propositions." *Id.* at 864. "While the court might be tempted to dismiss the [Petition] and wait to see if the legislature enacts its own districting plan in a timely fashion, the question then would become 'how long' must the court wait before allowing the plaintiffs to re-file." *Id.* at 865 (explaining that disclaiming jurisdiction on ripeness grounds would lead any deadline the court would set to be advisory). Petitioners need not wait any longer to seek redress from this Court, which must intervene now to remedy and prevent unconstitutional harm—just as courts routinely step in and hear redistricting cases when political impasse is similarly alleged. *See, e.g.*, *Mellow*, 607 A.2d at 211 (holding that the state judiciary not adhering to a pre-announced deadline to implement a plan in face of impasse "would create or would have created chaos"); *Scott v. Germano*, 381 U.S. 407, 409 (1965) ("The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases

has been specifically encouraged."); *Growe v. Emison*, 507 U.S. 25, 33-34 (1993) (same); *Flateau v. Anderson*, 537 F. Supp. 257, 262 (S.D.N.Y. 1982) ("While there has been no final failure to reapportion to date, the inevitability of such failure if this court does not direct reapportionment has persuaded us that the matter is ripe for adjudication.").

CONCLUSION

For these reasons, Petitioners respectfully request this Court overrule Respondents' Preliminary Objections.

Dated: August 2, 2021

Respectfully submitted,

*_/s/ Edward D. Rogers*_____

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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.

Submitted by: Edward D. Rogers

Signature: */s/ Edward D. Rogers*

Name: Edward D. Rogers

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Memorandum of Law to be served upon the following parties and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

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