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Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

VERONICA DEGRAFFENREID, in her capacity as
Acting Secretary of the Commonwealth of Pennsylvania;
and JESSICA MATHIS, in her capacity as Director
for the Pennsylvania Bureau of Election Services
and Notaries,

Respondents.

No. _____

PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

INTRODUCTION

1. This is an action under the Pennsylvania Constitution and Pennsylvania Rule of Appellate Procedure 1511 challenging the unconstitutional malapportionment of Pennsylvania's current congressional district map. Petitioners are registered voters and leading mathematicians and scientists in the Commonwealth of Pennsylvania. Petitioners seek a declaration that the current congressional district map is unconstitutional, an injunction against the use of the current congressional district map in any future election, and the implementation of a new congressional district map with the correct number of congressional districts that adheres to the one-person, one-vote standard and all other applicable constitutional and legal requirements.

2. Pennsylvania's congressional map was last drawn in 2018, using data from the 2010 Census. Based on the results of the 2020 Census, Pennsylvania has lost a congressional seat. Pennsylvania therefore has no choice but to redraw its existing congressional map to include the correct number of districts before the 2022 primary election. Without a new redistricting plan, candidates do not know where to run and voters cannot identify or evaluate their candidates. Petitioners and all Pennsylvania voters, moreover, currently reside in severely malapportioned districts that deviate by as much as 95,000 persons from the ideal district population.

3. The current map's malapportionment violates the Pennsylvania Constitution. The Free and Fair Elections Clause requires that congressional districts be "as nearly equal in population as practicable." *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 809, 814 (Pa. 2018) [hereinafter *League of Women Voters I*]; see Pa. Const. art. I, § 5; *id.* art. II, § 16. The current map's districts, which vary by tens of thousands of voters, do not come close to satisfying this requirement. The Petition Clause of the Constitution also provides Commonwealth residents a right to associate. See Pa. Const. art. I, § 20. By lacking both equally populated districts

and the correct number of districts, the current map impairs the ability of voters to associate with other voters who live in their as-yet-undrawn districts, and the candidates running for office in these unknown districts. The Pennsylvania Constitution, moreover, guarantees Commonwealth residents equal protection of the law. *See id.* art. I, § 1; *id.* art. I, § 26. The current map violates these guarantees because its malapportionment means that the power of Commonwealth residents' votes varies significantly based on where those residents live.

4. Although “the primary responsibility and authority” for redistricting “rests squarely with the state legislature,” *League of Women Voters I*, 178 A.3d at 821–22, on December 15, 2021—the final day of the 2021 legislative session—the General Assembly adjourned without adopting a new congressional district plan. The House State Government Committee voted a preliminary congressional district plan out of committee on December 15, but this plan has not been brought up for first consideration in the House, and it cannot be until the General Assembly reconvenes in January.

5. The filing period for candidate nomination papers for the 2022 primary election is scheduled to commence on February 15, 2022.

6. Respondents—the Acting Secretary of the Commonwealth and the Director of the Bureau of Election Services and Notaries—previously represented that a new congressional district map must be enacted by late December 2021, and a final congressional district map signed into law by January 24, 2022, to ensure that the 2022 primary election can go forward as planned.

7. Because the General Assembly adjourned without adopting a new congressional plan and there is no evidence that a new plan can or will be adopted in the coming weeks, there is no realistic prospect that a new congressional district map will be adopted by the General Assembly and signed by the Governor by January 24, 2022. Accordingly, judicial action is needed

to ensure that Petitioners and other Pennsylvania voters are not deprived of their rights under the Free and Equal Elections Clause, the Petition Clause, and the equal-protection guarantees of the Pennsylvania Constitution.

8. Moreover, because there is not sufficient time for an additional level of judicial review before the 2022 primary filing period opens, Petitioners intend to file an Application for the Exercise of King's Bench Power or Extraordinary Jurisdiction with the Supreme Court of Pennsylvania shortly after this Petition has been docketed.

JURISDICTION AND VENUE

9. This Court has original jurisdiction over this Verified Petition for Review under 42 Pa. C.S. § 761(a)(1) because this matter is asserted against Commonwealth officials in their official capacities.

PARTIES

10. Petitioners are United States citizens and registered voters in the Commonwealth of Pennsylvania. Petitioners are also leading professors of mathematics and science who reside in congressional districts that were most recently redrawn in 2018, using population data from the 2010 Census. The 2020 Census Redistricting Data shows that each Petitioner now lives in a district that is unconstitutionally malapportioned. Petitioners advocate for a rigorous, data-driven, and scientifically based means of redistricting their malapportioned districts.

11. Petitioner Philip T. Gressman is a registered voter who resides in Delaware County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Gressman is a Professor of Mathematics at the University of Pennsylvania, where he teaches courses on mathematical analysis. Among other subjects, Dr. Gressman conducts research on geometric analysis, which deals with quantifying various features of irregular

shapes and structures. He has received a National Science Foundation Research Fellowship and Postdoctoral Fellowship, as well as over ten teaching awards. Dr. Gressman received his Ph.D. in Mathematics from Princeton University.

12. Petitioner Ron Y. Donagi is a registered voter who resides in Montgomery County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Donagi is the Thomas A. Scott Professor of Mathematics at the University of Pennsylvania, where he teaches courses on mathematical physics and conducts research on algebraic geometry, among other subjects. He has published 109 articles and eight books. Dr. Donagi is the Graduate Chair of the University of Pennsylvania's Department of Mathematics, and he has served previously as the Undergraduate Chair. Dr. Donagi received his Ph.D. in Mathematics from Harvard University.

13. Petitioner Kristopher R. Tapp is a registered voter who resides in Delaware County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Tapp is a Professor and Chair of the Mathematics Department at St. Joseph's University, where he conducts research that includes mathematical analyses of Pennsylvania's voting districts. He has been invited to present research at various institutions across the United States, including at the American Mathematical Society's Special Session on the Mathematics of Redistricting. Dr. Tapp received his Ph.D. in Mathematics from the University of Pennsylvania.

14. Petitioner Pamela Gorkin is a registered voter who resides in Union County and in Congressional District 12, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Gorkin is a Professor of Mathematics at Bucknell University, where she conducts research on operator theory on function spaces, with a focus on the geometry of curves, and she teaches courses in linear algebra and topology, among other topics. She has presented

research internationally and has conducted research supported by grants from the National Science Foundation. Dr. Gorkin has served on the American Mathematical Society's Committee on the Profession and has received teaching awards at multiple universities. Dr. Gorkin received her M.S. in Statistics and Ph.D. in Mathematics, both from Michigan State University.

15. Petitioner David P. Marsh is a registered voter who resides in Union County and in Congressional District 12, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Marsh is a Professor Emeritus of Geography and Environmental Studies at Bucknell University, where his teaching includes applied geographic information systems (GIS) and spatial statistics with a focus on optimization methods and statistics. Dr. Marsh received his Ph.D. in Geography from Pennsylvania State University.

16. Petitioner James L. Rosenberger is a registered voter who resides in Centre County and in Congressional District 12, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Rosenberger is a Professor Emeritus of Statistics at Penn State University, where his expertise is in applied statistics. He is the Director of the National Institute of Statistical Sciences and a Fellow of both the American Association for the Advancement of Science and the American Statistical Association, which also honored him with its Founders Award. Dr. Rosenberger received his Ph.D. in Biometry from Cornell University.

17. Petitioner Amy Myers is a registered voter who resides in Philadelphia County and in Congressional District 3, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Myers is a Senior Lecturer in Mathematics at Bryn Mawr College, where she teaches statistics for data science, graph theory, and enumerative combinatorics. Dr. Myers serves on the Data Science Program Steering Committee for Bryn Mawr College and is Bryn Mawr's

Math Program Coordinator. Dr. Myers received her Ph.D. in Mathematics from Dartmouth College.

18. Petitioner Eugene Boman is a registered voter who resides in Dauphin County and in Congressional District 10, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Boman is an Associate Professor of Mathematics at Penn State University, Harrisburg Campus, where he teaches and researches, among other topics, numerical analysis, linear algebra, and real analysis. He has served on the editorial boards of multiple journals and has been awarded the Mathematical Association of America's Carl B. Allendoerfer Award for excellence in publication of an expository article. Dr. Boman received his Ph.D. in Mathematics from the University of Connecticut.

19. Petitioner Gary Gordon is a registered voter who resides in Northampton County and in Congressional District 7, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Gordon is the Head of the Mathematics Department and Marshall R. Metzgar Professor of Mathematics at Lafayette College, where he teaches and researches combinatorics, geometry, and algebra. He has lectured regarding the mathematics of apportionment, with a concentration on algorithms. Dr. Gordon received his Ph.D. in Mathematics from the University of North Carolina.

20. Petitioner Liz McMahon is a registered voter who resides in Northampton County and in Congressional District 7, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. McMahon is a Professor of Mathematics at Lafayette College, where she teaches and researches combinatorics, finite geometry, and symmetry groups. She has received multiple teaching awards, including the Mathematical Association of America's James P.

Crawford Award for Distinguished Teaching of Mathematics. Dr. McMahon received her Ph.D. in Mathematics from the University of North Carolina.

21. Petitioner Timothy G. Feeman is a registered voter who resides in Montgomery County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Feeman is a Professor of Mathematics and Statistics at Villanova University, where he teaches, among other courses, differential equations, linear algebra, and advanced calculus. Dr. Feeman's research explores the connections between mathematics and cartography, and he developed a course in Cartographiometry. He has received the Mathematical Association of America's George Pólya Award for Expository Writing. Dr. Feeman received his Ph.D. in Mathematics from the University of Michigan.

22. Petitioner Garth Isaak is a registered voter who resides in Montgomery County and in Congressional District 5, which the 2020 Census Redistricting Data demonstrates is malapportioned. Dr. Isaak is the Chair of the Mathematics Department and Professor of Mathematics at Lehigh University, where he teaches courses in graph theory and applied linear algebra. Dr. Isaak conducts research in the fields of graph theory and combinatorics. He is a Fellow of the Institute for Combinatorics and Its Applications. Dr. Isaak received his Ph.D. in Mathematics from Rutgers University.

23. Respondent Veronica Degraffenreid is the Acting Secretary of the Commonwealth and is sued in her official capacity only. In that capacity, Acting Secretary Degraffenreid is charged with general supervision and administration of Pennsylvania's elections and election laws. Acting Secretary Degraffenreid is Pennsylvania's Chief Election Official and a member of the Governor's Executive Board. Among her numerous responsibilities in administering elections, Acting Secretary Degraffenreid is responsible for receiving election results from counties for each

congressional district in the Commonwealth, and tabulating, computing, canvassing, and certifying those results. 25 P.S. § 3159.

24. Respondent Jessica Mathis is the Director for the Bureau of Election Services and Notaries, a branch of the Pennsylvania Department of State, and is sued in her official capacity only. In that capacity, Director Mathis is charged with supervising and administering the Commonwealth's elections. The Bureau of Election Services and Notaries is responsible for planning, developing, and coordinating the statewide implementation of the Election Code.

FACTUAL ALLEGATIONS

I. Pennsylvania's Current Congressional Plan Is Malapportioned.

25. This Court adopted Pennsylvania's current congressional district map in 2018, after holding that the congressional district map enacted in 2011 by the General Assembly and former Governor Corbett was a partisan gerrymander that violated Pennsylvania's Constitution. *See League of Women Voters of Pa. v. Commonwealth*, 181 A.3d 1083, 1086 (Pa. 2018) ("*League of Women Voters II*").

26. Based on the results of the 2020 Census, Pennsylvania's current congressional district map no longer has the correct number of congressional districts. The current map has 18 congressional districts, *see id.* at 1089-1121, but Pennsylvania was apportioned 17 congressional seats following the 2020 Census.¹

27. According to the 2020 Census, Pennsylvania has 13,002,700 residents. Thus, the ideal district population is about 764,864 or 764,865 persons for each of Pennsylvania's 17 congressional districts. Based on the 2020 Census Data, Pennsylvania's congressional districts

¹ See U.S. Dep't of Commerce, U.S. Census Bureau, *Table 1. Apportionment Population and Number of Representatives By State: 2020 Census*, <https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-table01.pdf> (last visited Dec. 10, 2021).

vary in population by as much as 95,000 residents, and none of the current districts has either 764,864 or 764,865 residents.

28. All of the Petitioners reside and intend to vote in a congressional district that the 2020 Census Data identifies as significantly malapportioned.

II. A Reapportioned Congressional Plan Cannot Be Timely Enacted.

29. In a July 1, 2021 filing before this Court, Respondents represented that “to help the counties reduce errors, allow for timely notice to candidates, and permit proper implementation of the new congressional districts, . . . the Department of State must receive a final and legally binding congressional district map *no later than January 24, 2022.*” Resp’ts’ Prelim. Obj. to Pets.’ Pet. for Rev., *Carter v. Degraffenreid*, No. 132 MD 2021, ¶ 15 (Pa. Commw. Ct. July 1, 2021) (emphasis added). They further represented that, “if a new congressional district map is signed into law *by the end of December 2021*, and if the courts provide expedited review of any challenges to that map, the map is likely to be final and binding by the January 24, 2022 date.” *Id.* ¶ 17 (emphasis added).

30. Respondents’ deadlines were tethered to the current primary calendar, whose initial deadlines are just weeks away. Nomination papers for candidates seeking to appear on the ballot for the 2022 primary election can be circulated beginning on February 15, 2022, and are due by March 8, 2022. *See* 25 P.S. § 2873.

31. The General Assembly adjourned its legislative session on December 15, 2021, without enacting a new congressional district map with the right number of congressional districts.² Although the House State Government Committee voted a preliminary congressional

² *See* Pa. House of Representatives, *House Session Days: December 15, 2021*, <https://www.legis.state.pa.us/SessionDays.cfm?Chamber=H> (last visited Dec. 10, 2021); Pa. House of Representatives, *Senate Session Days: December 15, 2021*, <https://www.legis.state.pa.us/SessionDays.cfm?Chamber=S> (last visited Dec. 10, 2021).

district plan out of committee on December 15, this plan has not been brought up for first consideration in the House, and it cannot be until the General Assembly reconvenes. The General Assembly's next legislative session does not begin until January 4, 2022.³ At this time, there is no realistic prospect that the General Assembly will pass a final congressional plan and the Governor will sign that plan into law before preparations for the primary election must begin. *See* 101 Pa. Code § 9.81 (requiring that a bill come before each house of the General Assembly at least three times on three different legislative days).

32. The legislative process has thus failed to produce a plan that could meet Respondents' January 24, 2022 deadline.

33. Because there is not time for an additional level of judicial review, Petitioners also will ask the Supreme Court of Pennsylvania to exercise its King's Bench power or extraordinary jurisdiction to provide the relief sought herein.

CLAIMS FOR RELIEF

COUNT I

Violation of Free and Equal Elections Clause Pa. Const. Art. I, § 5 Congressional Malapportionment

34. Petitioners incorporate paragraphs 1–33 as if fully set forth herein.

35. Under the Free and Equal Elections Clause of the Pennsylvania Constitution, “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5.

³ *See* Pa. House of Representatives, *House Session Days: January 4, 2022*, <https://www.legis.state.pa.us/SessionDays.cfm?SessionYear=2022&SessionInd=0&Chamber=H> (last visited Dec. 14, 2021); Pa. House of Representatives, *Senate Session Days: January 4, 2022*, <https://www.legis.state.pa.us/SessionDays.cfm?SessionYear=2022&SessionInd=0&Chamber=S> (last visited Dec. 14, 2021).

36. The Pennsylvania Constitution establishes legal requirements for legislative districts, which the Pennsylvania Supreme Court has extended to congressional districts. Pa. Const. art. II, § 16; *League of Women Voters I*, 178 A.3d at 816–17. These include the requirement that districts be “as nearly equal in population as practicable.” Pa. Const. art. II, § 16. To fulfill this equal-population criterion, congressional districts must be drawn “by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share.” *League of Women Voters I*, 178 A.3d at 809 (quotation marks omitted).

37. Although this petition and this claim are brought solely under the Pennsylvania Constitution, Article I, Section 2 of the United States Constitution likewise has been interpreted to require equipopulous congressional districts. *See Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964).

38. The current congressional plan completely fails to satisfy this criterion. Petitioners’ districts, and all other districts in the current plan, vary by as much as tens of thousands of persons relative to one another and to the ideal district population.

39. The cause of these deviations from population equality is not an attempt to balance neutral redistricting criteria, *see League of Women Voters*, 178 A.3d at 816-17, but rather the political branches’ failure to act.

40. The congressional district plan thus violates the Free and Equal Elections Clause.

COUNT II

Violation of Petition Clause Pa. Const. art. I, § 20 Freedom of Association

41. Petitioners incorporate paragraphs 1–33 as if fully set forth herein.

42. The Pennsylvania Constitution provides Commonwealth residents “a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.” Pa. Const. art. I, § 20.

43. As this Court has recognized, “The Pennsylvania Constitution affords greater protection of speech and associational rights than does our Federal Constitution.” *Working Families Party v. Commonwealth*, 169 A.3d 1247, 1260 (Pa. Commw. Ct. 2017), *aff’d*, 209 A.3d 270 (Pa. 2019); *see also Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981) (“It is small wonder, then, that the rights of freedom of speech, assembly, and petition have been guaranteed since the first Pennsylvania Constitution, not simply as restrictions on the powers of government, as found in the Federal Constitution, but as inherent and ‘invaluable’ rights of man.”); *DePaul v. Commonwealth*, 969 A.2d 536, 589 (Pa. 2009) (noting that the Pennsylvania Constitution “provides broader protections of expression than the related First Amendment guarantee in a number of different contexts.”).

44. Because the Commonwealth lacks a lawfully apportioned congressional plan, neither potential candidates for office in the 2022 primary and general elections, nor Petitioners as voters in those elections, know where the boundaries of constitutional congressional districts lie.

45. Potential candidates thus do not know where they will be able to run and cannot identify their constituents. Petitioners, in turn, do not know who will be running in their districts and cannot identify their fellow district residents.

46. Petitioners are therefore deprived of the ability to associate with other voters who live in their lawful congressional districts, or to associate with those candidates who will run for

office in their districts—again, for no reason other than the political branches’ failure to act.

47. Petitioners’ constitutional right to associate thus has been burdened without any legitimate or compelling state interest for doing so.

COUNT III

Violation of Equal-Protection Guarantees Pa. Const., art. I, § 1; Pa. Const., art. I, § 26 Congressional Malapportionment

48. Petitioners incorporate paragraphs 1–33 as if fully set forth herein.

49. The Pennsylvania Constitution also affords Commonwealth residents the equal protection of its laws.

50. Article I, Section 1 of the Constitution states, “All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” Pa. Const. art. I, § 1. Article I, Section 26 provides that “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” *Id.* art. I, § 26.

51. Because Petitioners’ districts, and all other districts in the current plan, vary by as much as tens of thousands of persons relative to one another and to the ideal district population, the weight of a given Commonwealth citizen’s vote also varies significantly based on where that citizen lives.

52. By diluting the power of Commonwealth citizens’ votes, based on where those residents live, the congressional district plan violates the Pennsylvania Constitution’s equal-protection guarantees, without any legitimate or compelling state interest for doing so.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request the following relief:

- a. A declaration that the current configuration of Pennsylvania's congressional districts violates Article I, Section 1; Article I, Section 5; Article I, Section 20; and Article II, Section 26 of the Pennsylvania Constitution;
- b. An order enjoining Respondents, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Pennsylvania's current congressional district plan in any future election; and
- c. Such other and further relief as deemed just and proper.

Dated: December 17, 2021

Respectfully submitted,

By: /s/ Kim M. Watterson

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Jessica Ring Amunson*
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Tassity S. Johnson*
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Counsel for Petitioners

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: Kim M. Watterson

Signature: /s/ Kim M. Watterson

Name: Kim M. Watterson

Attorney No. PA 63552

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VERIFICATION

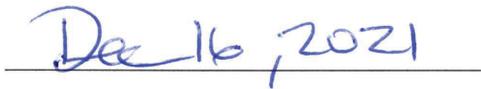
I, James L. Rosenberger, hereby state:

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:



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NOTICE TO PLEAD

TO: Acting Secretary Veronica Degraffenreid
Pennsylvania Department of State
Office of the Secretary
302 North Office Building, 401 North Street
Harrisburg, PA 17120

Director Jessica Mathis
Pennsylvania Bureau of Election Services and Notaries
210 North Office Building, 401 North Street
Harrisburg, PA 17120

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.

Dated: December 17, 2021

Respectfully submitted,

By: /s/ Kim M. Watterson

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Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Petition for Review to be served upon the following parties and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 1514 and 121:

By Certified Mail:

Acting Secretary Veronica Degraffenreid
Pennsylvania Department of State
Office of the Secretary
302 North Office Building, 401 North Street
Harrisburg, PA 17120

Director Jessica Mathis
Pennsylvania Bureau of Election Services and Notaries
210 North Office Building, 401 North Street
Harrisburg, PA 17120

Attorney General Josh Shapiro
Pennsylvania Office of the Attorney General
Strawberry Square
Harrisburg, PA 17120

Dated: December 17, 2021

Respectfully submitted,

By: /s/ Kim M. Watterson

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