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motion forthcoming.

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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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ROBERT L. HOLBROOK; ABD'ALLAH LATEEF;  
TERRANCE LEWIS; MARGARET ROBERTSON;  
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE; NAACP PENNSYLVANIA STATE  
CONFERENCE; PHILADELPHIA BRANCH OF THE  
NAACP; UNIVERSITY OF PENNSYLVANIA CHAPTER OF  
THE NAACP; PROGRESSIVE NAACP; and UNIVERSITY OF  
PENNSYLVANIA CHAPTER OF BEYOND ARREST: RE-  
THINKING SYSTEMATIC-OPPRESSION,

*Petitioners,*

v.

COMMONWEALTH OF PENNSYLVANIA; THOMAS W.  
WOLF, in his official capacity as Governor of Pennsylvania; and  
KATHY BOOCKVAR, in her official capacity as Secretary of the  
Commonwealth of Pennsylvania,

*Respondents.*

No. \_\_\_\_\_

**NOTICE TO DEFEND**

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 twenty (20) days, or within the time set by order of the court, after this Petition 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

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Commonwealth of Pennsylvania,

*Respondents.*

No. \_\_\_\_\_

**PETITION FOR REVIEW**  
**ADDRESSED TO THE COURT’S ORIGINAL JURISDICTION**

**INTRODUCTION**

1. This Petition for Review concerns Pennsylvania’s practice of counting incarcerated people as electoral residents of the correctional facilities where they are involuntarily and often temporarily imprisoned rather than as electoral residents of their pre-incarceration communities, *i.e.*, their true residences.

2. This practice, known as “prison-based gerrymandering,” has the following unconstitutional effects:

(a) It artificially and arbitrarily **inflates** the political power of the voters, who are predominantly white, and who live in the primarily rural counties where most of Pennsylvania’s correctional facilities are located; and

(b) It artificially and arbitrarily **dilutes** the political power of the voters, who are predominantly Black and Latino, and who live in the primarily urban counties, such as Philadelphia and Pittsburgh, where very few correctional facilities are located.

3. The state legislators who serve electoral districts containing prisons do not in practice represent the people who are incarcerated there. Incarcerated people typically have no contact with the legislators who represent the districts in which they are imprisoned, and those legislators typically do not visit them, communicate

with them, or provide opportunities for them to make their views known on policy issues. Incarcerated people, who cannot attend candidate forums or legislative town halls in the districts where they are imprisoned, lack effective means of petitioning the legislators who represent those districts for assistance.

4. Under Pennsylvania law, people who are incarcerated for felony convictions cannot vote for representatives of the districts where they are imprisoned—nor, indeed, for any representatives. The small number of incarcerated people who *are* eligible to vote may only cast absentee ballots in their pre-incarceration communities and are barred from using the address of a prison facility to register to vote.

5. Pennsylvania law is also clear that incarcerated people are not—and may not become—residents of the electoral districts in which they are incarcerated. Instead, incarcerated people legally reside either where they were last registered to vote, or at their last known address before incarceration. 25 Pa. Cons. Stat. § 1302(a)(3). Pennsylvanians who are incarcerated in legislative districts far from their homes have no meaningful connection to the districts where they are imprisoned. Incarcerated people cannot visit public or private establishments in the districts where they are incarcerated or use public services in the surrounding communities.

6. Several General Assembly districts wrongly count thousands of incarcerated people as part of their population. Thus, these districts only satisfy the minimum population threshold by including people who are legally barred from attaining residency in the district for electoral purposes, cannot vote in the district, and who are unable to form community ties, use public or private facilities outside the prison, or access constituent services within the district.

7. If these incarcerated people were instead counted where they were last registered to vote, or at their last known address before incarceration, as Pennsylvania constitutional and statutory law demands, several current districts where prisons are located would be substantially underpopulated, and several urban districts would be substantially overpopulated.

8. Pennsylvania's "prison-based gerrymandering" scheme violates Article I, Section 5 of the Pennsylvania Constitution, which requires that "[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.

9. The Pennsylvania Supreme Court has held that Article I, Section 5 "guarantees, to **the greatest degree possible**, a voter's right to equal participation in the electoral process for the selection of his or her representatives in government[.]" and "mandates that all voters have an equal opportunity to translate their votes into representation." *League of Women Voters v. Commonwealth*, 178

A.3d 737, 804 (Pa. 2018) (emphasis added). “[A]ny legislative scheme which has the effect of impermissibly diluting the potency of an individual’s vote for candidates for elective office relative to that of other voters will violate the guarantee of ‘free and equal’ elections afforded by Article I, Section 5.” *Id.* at 809.

10. The Commonwealth’s use of prison-based gerrymandering in its apportionment plans for the Pennsylvania General Assembly violates the “Free and Equal” elections guarantee, because the practice inflates the voting power of the predominantly white voters who reside in legislative districts that contain prisons, while diluting the voting power of the disproportionately Black and Latino voters who reside in imprisoned people’s home communities—thus depriving these voters of “an equal opportunity to translate their votes into representation.” *See id.* at 804.

11. The Commonwealth’s use of prison-based gerrymandering in reapportionment plans for the General Assembly also violates Article II, Section 16 of the Pennsylvania Constitution, which mandates that Pennsylvania’s 50 senatorial and 203 representative districts shall be “as nearly equal in population as practicable.” Pa. Const. art II, § 16.

12. The Commonwealth’s use of prison-based gerrymandering is also incompatible with Pennsylvania law. In fact, counting incarcerated people as residents of the districts where they are imprisoned violates 25 Pa. Cons. Stat. § 1302(a)(3), which mandates that, “[e]xcept as otherwise provided in this subsection



[1302(a)], no individual who is confined in a penal institution shall be deemed a resident of the election district where the institution is located. The individual shall be deemed to reside where the individual was last registered before being confined in the penal institution, or, if there was no registration prior to confinement, the individual shall be deemed to reside at the last known address before confinement.”<sup>1</sup>

13. In sum, Respondents have no permissible basis in the Commonwealth’s constitutional or statutory law for counting incarcerated people as residents of the electoral districts where they are temporarily imprisoned. “Prison-based gerrymandering” constitutes a clear and patent violation of Article I, Section 5 and Article II, Section 16 of the Pennsylvania Constitution, and the deviations from population equality thus caused cannot be justified under 25 Pa. Cons. Stat. § 1302(a)(3).

14. Petitioners seek a declaration that Pennsylvania’s current state legislative districting scheme violates Article I, Section 5 and Article II, Section 16 of the Pennsylvania Constitution, as well as 25 Pa. Cons. Stat. § 1302(a)(3), because it allocates incarcerated people as residents of the electoral districts where they are

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<sup>1</sup> The only two exceptions to 25 Pa. Cons. Stat. § 1302(a) are Subsection 1302(a)(1)(iii), which grants “a veteran who resides in a home for disabled and indigent soldiers and sailors maintained by the Commonwealth” the option to elect to be a resident at that home, and Subsection 1302(a)(4), which grants an individual confined to “an institution for the mentally ill or the mentally retarded” the option of being a resident where the institution is located or where the individual last resided before entering the institution. Neither exception authorizes the Commonwealth to count incarcerated people as residents of correctional facilities.

imprisoned rather than where they legally reside under Pennsylvania law, *i.e.*, in the districts where their most recent home addresses are located or where they last were registered.

15. Petitioners further seek a declaration that the use of prison-based gerrymandering violates Article I, Section 5 and Article II, Section 16 of the Pennsylvania Constitution, and 25 Pa. Cons. Stat. § 1302(a)(3), and that, as a result, any present or future apportionment plan for the General Assembly created through the use of that practice is unconstitutional, and pray this Court to enjoin the Commonwealth from perpetuating these violations in future reapportionment plans, beginning with the reapportionment cycle commencing after the 2020 U.S. Census.

## **PARTIES**

### **A. *Petitioners***

16. **Robert L. Holbrook** is a 46-year-old Black resident of Woodlyn, a census-designated place in Ridley Township, Pennsylvania, in the Philadelphia metropolitan area. He is a duly qualified elector eligible to vote in local, state, and federal elections.

17. On February 29, 1991, Mr. Holbrook was sentenced to life-imprisonment without the possibility of parole (“LWOP”), after he was convicted of participating in a crime on January 21, 1990—the day he turned 16 years old.

18. Mr. Holbrook was arrested in connection with this crime on May 21, 1990. For the next 27 years, Mr. Holbrook was incarcerated at various locations in the Commonwealth, including SCI Graterford, SCI Huntingdon, SCI Albion, SCI Dallas, SCI Frackville, SCI Greene, SCI Coal Township, and SCI Pittsburgh.

19. At the time of the 2010 census, Mr. Holbrook was imprisoned at SCI Greene, which is located in Pennsylvania House of Representatives District (“HD”) 50.

20. Due to the Commonwealth’s use of prison-based gerrymandering, the current legislative apportionment plan for the Pennsylvania House of Representatives, which is based on 2010 census data, improperly treats Mr. Holbrook as a resident of SCI Greene, in HD 50. This is despite the fact that Mr. Holbrook was legally barred from obtaining residency or voting in HD 50 during his incarceration at SCI Greene, and that his actual home address and his status as a permanent resident of the Philadelphia metropolitan area were known to the Commonwealth or its agents through records in their possession or under their control.

21. On February 20, 2018, Mr. Holbrook was released on parole after a resentencing hearing pursuant to the United States Supreme Court’s holdings, in *Miller v. Alabama*, 567 U.S. 460 (2012), that mandatory LWOP sentences for

juveniles are an unconstitutional form of cruel and unusual punishment, and in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), that *Miller* applied retroactively.

22. Since physically returning home to the Philadelphia metropolitan area, Mr. Holbrook has dedicated himself to social justice. Mr. Holbrook is a paralegal and community organizer for the Abolitionist Law Center. He is also a co-founder of the Human Rights Coalition, an organization with chapters in Philadelphia and Pittsburgh that is composed of family members of imprisoned people and which advocates for the civil and human rights of prisoners. He sits on the advisory boards of the Amistad Law Project and Youth Arts and Empowerment Project. Mr. Holbrook is also a member of 1Hood, a movement of socially conscious hip hop artists and community activists and started a prison chapter called 1Hood United to help mentor youth in Pennsylvania's state prisons.

23. Mr. Holbrook is currently registered to vote at his home in Ridley Township, which is located in HD 161. He registered to vote in 2018 and plans to vote in 2020 and in future elections.

24. HD 161 does not contain a prison. By artificially inflating the populations of legislative districts that contain prisons, prison-based gerrymandering dilutes the voting and representational strength of people like Mr. Holbrook who live in legislative districts that do not contain prisons, such as HD 161.

25. As a registered voter and resident of HD 161, Mr. Holbrook is suffering immediate and irreparable injury because the Commonwealth's use of prison-based gerrymandering causes the present and continuing dilution of his voting and representational rights. Mr. Holbrook thus has a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

26. **Abd'allah Lateef** is a 51-year-old Black resident of Philadelphia, Pennsylvania, and a duly qualified elector eligible to vote in local, state, and federal elections.

27. In 1988, Mr. Lateef was sentenced to LWOP for a crime committed in 1986, when he was 17 years old.<sup>2</sup> For most of the next three decades, Mr. Lateef was incarcerated at various locations in the Commonwealth, including SCI Graterford, SCI Huntingdon, SCI Pittsburgh, SCI Greene, and SCI Frackville.

28. At the time of the 2010 census, Mr. Lateef was imprisoned at SCI Greene, which is located in HD 50.

29. Due to the Commonwealth's use of prison-based gerrymandering, the current legislative apportionment plan for the Pennsylvania House of Representatives improperly treats Mr. Lateef as a resident of SCI Greene, in HD 50. This is despite that Mr. Lateef was legally barred from obtaining residency or voting

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<sup>2</sup> At that time, Mr. Lateef was known as Aaron Phillips.

in HD 50 during his incarceration at SCI Greene, and that his actual home address and his status as a permanent resident of the Philadelphia metropolitan area were known to the Commonwealth or its agents through records in their possession or under their control.

30. On October 10, 2017, Mr. Lateef was released on parole after a resentencing hearing pursuant to *Miller* and *Montgomery*.

31. Since physically returning home to Philadelphia, Mr. Lateef has dedicated himself to youth advocacy and sentencing reform. He works to create pathways to prosperity for people returning from incarceration, including people who were formerly sentenced to LWOP as children. Mr. Lateef is the Pennsylvania Coordinator for the Incarcerated Children's Advocacy Network ("ICAN"), an outreach initiative of the Campaign for the Fair Sentencing of Youth. He is also the chair, pro tempore, of Life After Life, Inc.; a member of the Philadelphia Reentry Coalition; a member of the University of Pennsylvania's Goldring Reentry Initiatives Advisory Board; and a former Philadelphia Reentry Think Tank Fellow.

32. Mr. Lateef is currently registered to vote at his Philadelphia home, which is located in HD 195, a district which includes portions of North Philadelphia. He believes that he has voted in every election for which he has been eligible since 2018, the first year in which he was eligible to vote. He plans to vote in 2020 and in future elections.

33. HD 195 does not contain a prison, and a disproportionate number of people from HD 195 are improperly counted, under the Commonwealth's prison-based gerrymandering scheme, as residents of prisons that are located in other legislative districts—as Mr. Lateef himself was in the reapportionment cycles following the 1990, 2000, and 2010 census counts. By artificially inflating the populations of legislative districts that contain prisons, prison-based gerrymandering dilutes the voting and representational strength of people like Mr. Lateef who live in legislative districts that do not contain prisons, such as HD 195.

34. As a registered voter and resident of HD 195, Mr. Lateef is suffering immediate and irreparable injury because the Commonwealth's use of prison-based gerrymandering causes the present and continuing dilution of his voting and representational rights. Mr. Lateef thus has a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

35. **Terrance Lewis** is a 41-year-old Black resident of Philadelphia, Pennsylvania, and a duly qualified elector eligible to vote in local, state, and federal elections.

36. On May 24, 1999, Mr. Lewis was wrongfully convicted of second-degree murder and sentenced to LWOP for a crime he did not commit.

37. The crime for which Mr. Lewis was erroneously arrested and later erroneously convicted took place on August 6, 1996, when Mr. Lewis was 17 years old. He was arrested in December of 1997. For the next 21 years, Mr. Lewis was incarcerated at various locations in the Commonwealth, including SCI Graterford, SCI Camp Hill, SCI Smithfield, SCI Pittsburgh, SCI Fayette, SCI Huntingdon, and SCI Chester.

38. At the time of the 2010 census, Mr. Lewis was imprisoned at SCI Pittsburgh, which has since been permanently closed. SCI Pittsburgh was located in HD 19.

39. Due to the Commonwealth's use of prison-based gerrymandering, the current legislative apportionment plan for the Pennsylvania House of Representatives improperly treats Mr. Lewis as a resident of SCI Pittsburgh, in HD 19. This is despite the fact that Mr. Lewis was legally barred from obtaining residency or voting in HD 19 during his incarceration at SCI Pittsburgh, and that his actual home address and his status as a permanent resident of Philadelphia were known to the Commonwealth or its agents through records in their possession or under their control.

40. On May 21, 2019, during a resentencing hearing pursuant to *Miller* and *Montgomery*, the Honorable Barbara McDermott of the Court of Common Pleas of Philadelphia County vacated Mr. Lewis's conviction due to what the court



determined was a denial of due process.<sup>3</sup> The Philadelphia County District Attorney’s Office stated its intention not to retry Mr. Lewis, acknowledging “that there has been a miscarriage of justice,” and dropped all charges.<sup>4</sup> Mr. Lewis was released the following morning.

41. Since physically returning home to Philadelphia, Mr. Lewis has dedicated himself to advocating for just laws and policies for those who are or have been disenfranchised. He is committed to ending racial injustice, including racial disparities in the criminal system.

42. Mr. Lewis currently works as an organizer for the Abolitionist Law Center.

43. Shortly after his release in 2019, Mr. Lewis registered to vote at his home in Philadelphia, which is located in HD 192, a district which includes parts of West Philadelphia. Mr. Lewis’s registration remains active. In November of 2019, he cast a ballot in the Philadelphia municipal election—the first election of Mr. Lewis’s life in which he was eligible to vote. He plans to vote in 2020 and in future elections.

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<sup>3</sup> Samantha Melamed, *Philly judge stuns wrongly convicted juvenile lifer by setting him free after 21 years in prison*, Phila. Inquirer (May 22, 2019), <https://www.inquirer.com/news/juvenile-lifer-innocent-terrance-williams-larry-krasner-philadelphia-pennsylvania-jlwop-20190522.html>.

<sup>4</sup> Samantha Melamed, *Philadelphia man, wrongly imprisoned 21 years, alleges rampant misconduct in lawsuit*, Phila. Inquirer (July 1, 2019), <https://www.inquirer.com/news/terrance-lewis-wrongful-conviction-exoneration-philly-police-misconduct-juvenile-lifer-20190701.html>.

44. HD 192 does not contain a prison, and a disproportionate number of people from HD 192 are improperly counted, under the Commonwealth's prison-based gerrymandering scheme, as residents of prisons that are located in other legislative districts—as Mr. Lewis himself was in the reapportionment cycles following the 2000 and 2010 Census counts. By artificially inflating the populations of legislative districts that contain prisons, prison-based gerrymandering dilutes the voting and representational strength of people like Mr. Lewis who live in legislative districts that do not contain prisons, such as HD 192.

45. As a registered voter and resident of HD 192, Mr. Lewis is suffering immediate and irreparable injury because the Commonwealth's use of prison-based gerrymandering causes the present and continuing dilution of his voting and representational rights. Mr. Lewis thus has a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

46. **Margaret Robertson** is a 70-year-old Black resident of Philadelphia, Pennsylvania, and duly qualified elector eligible to vote in local, state, and federal elections. She is a resident of HD 200, which includes parts of Northwest Philadelphia.

47. HD 200 does not contain a prison, and a disproportionate number of people living in HD 200 are improperly counted, under the Commonwealth's prison-

based gerrymandering scheme, as residents of prisons that are located in other legislative districts. By artificially inflating the populations of legislative districts that contain prisons, prison-based gerrymandering dilutes the voting and representational strength of people who live in legislative districts that do not contain prisons, such as Ms. Robertson. Ms. Robertson plans to vote in 2020 and in future elections.

48. As a registered voter and resident of HD 200, Ms. Robertson is suffering immediate and irreparable injury because the Commonwealth's use of prison-based gerrymandering causes the present and continuing dilution of her voting and representational rights. Thus, Ms. Robertson has a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

49. **The National Association for the Advancement of Colored People (“national NAACP”)** is a non-profit, non-partisan corporation with approximately 300,000 members, including over 6,200 residing in the Commonwealth of Pennsylvania, many of whom are registered to vote.

50. The mission of the NAACP is to secure political, educational, social, and economic equal rights in order to eliminate all race-based discrimination and ensure the health and well-being of all persons. The NAACP's vision is to ensure a society in which all individuals have equal rights without discrimination based on

race. To carry out its mission and fulfill its vision, the NAACP works to enhance civic engagement among Black communities by increasing voter registration and get-out-the-vote efforts. The NAACP relies on fair and effective electoral processes to help achieve its organizational missions of improving civic engagement, education, criminal justice, environmental justice, economic opportunity, and healthcare.

51. Members of the NAACP pay dues, elect local and state NAACP officers, and are eligible to serve as local and state NAACP officers and on the NAACP Board of Directors. The NAACP's policy positions are established at an annual national convention by voting delegates representing each NAACP State Conference, Local Branch, and Youth Unit, elected by the members of those units.

52. Many NAACP members are both registered Pennsylvania voters and residents in state legislative districts that are harmed by prison-based gerrymandering, including members who reside in HDs 179, 190, 197, 198, 200, 201, 202, and 203, among others.

53. For example, NAACP members Rodney Muhammad, Cleveland Edwards, Shirley Jordan, Rochelle Bilal, Shirley Roberts, and Sharon Powell are registered to vote in HD 203. NAACP members Sean Parker, Yvette Parker, and Veronica Norris are registered to vote in HD 200, and NAACP member Chandra Deal is registered to vote in HD 202. HDs 200, 202, and 203 are located entirely in

Philadelphia. These districts do not contain prisons, and a disproportionate number of the districts' legally permanent residents are counted for redistricting purposes at prisons in other legislative districts where they are temporarily incarcerated. As a result, Minister Muhammad, Reverend Edwards, Ms. Jordan, Sheriff Bilal, Ms. Roberts, Ms. Powell, Mr. Parker, Ms. Parker, Ms. Norris, Ms. Deal, and many of their fellow NAACP members who are registered voters in Pennsylvania are suffering immediate and irreparable injury because of the present and continuing dilution of their voting and representational rights caused by prison-based gerrymandering. These NAACP members who live and vote in diluted Pennsylvania legislative districts have a substantial, direct, and immediate interest in obtaining a declaratory judgment that the practice violates the Pennsylvania Constitution and an injunction preventing the Commonwealth from continuing the practice in the reapportionment cycle commencing after the 2020 U.S. Census.

54. The NAACP brings this action in its associational capacity on behalf of its members who are harmed by prison-based gerrymandering, including the individuals identified herein. As registered voters who live in Pennsylvania legislative districts where their voting and representational rights are diluted by prison-based gerrymandering, these NAACP members are aggrieved by Respondents' refusal to assure them equal voting and representational rights as compared to other Pennsylvania voters, including those who happen to be located in

areas with prisons. Therefore, these members have—and the NAACP, in its associational capacity, has—a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

55. **The NAACP Pennsylvania State Conference (“Pennsylvania NAACP”)** is a non-profit, non-partisan organization with over 6,200 members, all of whom reside or work in Pennsylvania, and many of whom are domiciled and registered to vote in Pennsylvania.<sup>5</sup> The Pennsylvania NAACP shares the national NAACP’s mission and vision: to secure political, educational, social, and economic equal rights in order to eliminate all race-based discrimination and ensure the health and well-being of all persons; and to ensure a society in which all individuals have equal rights without discrimination based on race.

56. Many Pennsylvania NAACP members—including Minister Muhammad, Reverend Edwards, Ms. Jordan, Sheriff Bilal, Ms. Roberts, Ms. Powell, Mr. Parker, Ms. Parker, Ms. Norris, and Ms. Deal, discussed above—are registered voters and residents in state legislative districts that are harmed by prison-based gerrymandering, including members who reside in HDs 179, 190, 197, 198, 200, 201, 202, and 203, among others. As a result, these Pennsylvania NAACP members are suffering immediate and irreparable injury because of the present and continuing

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<sup>5</sup> All members of the Pennsylvania NAACP are also members of the national NAACP.

dilution of their voting and representational rights caused by prison-based gerrymandering. These Pennsylvania NAACP members who live and vote in diluted Pennsylvania legislative districts have a substantial, direct, and immediate interest in obtaining a declaratory judgment that the practice violates the Pennsylvania Constitution and an injunction preventing the Commonwealth from continuing the practice in the reapportionment cycle commencing after the 2020 U.S. Census.

57. The Pennsylvania NAACP brings this action in its associational capacity on behalf of its members who are harmed by prison-based gerrymandering, including the individuals identified herein. As registered voters who live in Pennsylvania legislative districts where their voting and representational rights are diluted by prison-based gerrymandering, these Pennsylvania NAACP members are aggrieved by Respondents' refusal to assure them equal voting and representational rights as compared to other Pennsylvania voters, including those who happen to be located in areas with prisons. Therefore, these members have—and the Pennsylvania NAACP, in its associational capacity, has—a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

58. **The Philadelphia Branch of the NAACP (“Philadelphia NAACP”)** is a non-profit, non-partisan organization with over 1,300 members, all of whom

reside or work in Philadelphia, and many of whom are registered to vote.<sup>6</sup> The Philadelphia NAACP shares the national NAACP's mission and vision: to secure political, educational, social, and economic equal rights in order to eliminate all race-based discrimination and ensure the health and well-being of all persons; and to ensure a society in which all individuals have equal rights without discrimination based on race.

59. Many members of the Philadelphia NAACP—including Minister Muhammad, Reverend Edwards, Ms. Jordan, Sheriff Bilal, Ms. Roberts, Ms. Powell, Mr. Parker, Ms. Parker, Ms. Norris, Ms. Deal, discussed above, who also serve on the Philadelphia NAACP's Executive Committee—are registered voters and residents in state legislative districts that are harmed by prison-based gerrymandering, including members who reside in HDs 179, 190, 197, 198, 200, 201, 202, and 203, among others. As a result, these Philadelphia NAACP members are suffering immediate and irreparable injury because of the present and continuing dilution of their voting and representational rights caused by prison-based gerrymandering. These Philadelphia NAACP members who live and vote in diluted legislative districts have a substantial, direct, and immediate interest in obtaining a declaratory judgment that the practice violates the Pennsylvania Constitution and an

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<sup>6</sup> All members of the Philadelphia NAACP are also members of the national NAACP and the Pennsylvania NAACP.



injunction preventing the Commonwealth from continuing the practice in the reapportionment cycle commencing after the 2020 U.S. Census.

60. The Philadelphia NAACP brings this action in its associational capacity on behalf of its members who are harmed by prison-based gerrymandering, including the individuals identified herein. As registered voters who live in Pennsylvania legislative districts where their voting and representational rights are diluted by prison-based gerrymandering, these Philadelphia NAACP members are aggrieved by Respondents' refusal to assure them equal voting and representational rights as compared to other Pennsylvania voters, including those who happen to be located in areas with prisons. Therefore, these members have—and the Philadelphia NAACP, in its associational capacity, has—a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

61. **The University of Pennsylvania Chapter of the NAACP (“UPenn NAACP”)** is a non-profit, non-partisan organization with approximately 50 members, all of whom are students at the University of Pennsylvania located in Philadelphia.<sup>7</sup> UPenn NAACP strives to ensure the social, political, economic, and educational equality of all persons in the university community as well as the Greater

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<sup>7</sup> All members of the UPenn NAACP are also members of the national NAACP and the Pennsylvania NAACP.

West Philadelphia area through implementation of grassroots efforts such as direct action and community engagement. Many members of the UPenn NAACP are Pennsylvania registered voters and residents in state legislative districts that are harmed by prison-based gerrymandering, including members who reside in HDs 151, 175, 186, 188, and 190.

62. For example, Trapetas McGill, an undergraduate student at the University of Pennsylvania who is both a member of the UPenn NAACP and the chapter's Vice President, is registered to vote in HD 188, which includes parts of West Philadelphia. HD 188 is located entirely in Philadelphia. does not contain a prison, and a disproportionate number of the district's permanent residents are counted for redistricting purposes at prisons in other legislative districts where they are temporarily incarcerated. As a result, Ms. McGill and other UPenn NAACP members are suffering immediate and irreparable injury because of the present and continuing dilution of their voting and representational rights caused by prison-based gerrymandering. These UPenn NAACP members have a substantial, direct, and immediate interest in obtaining a declaratory judgment that the practice violates the Pennsylvania Constitution and an injunction preventing the Commonwealth from continuing the practice in the reapportionment cycle commencing after the 2020 U.S. Census.

63. Ms. McGill and other members of the UPenn NAACP have turned 18 and have become qualified to vote in the years since the Commonwealth of Pennsylvania adopted and implemented its current apportionment plan for the General Assembly. Ms. McGill turned 18 and registered to vote in Pennsylvania in 2017.

64. The UPenn NAACP brings this action in its associational capacity on behalf of its members who are harmed by prison-based gerrymandering, including Ms. McGill, identified herein. As registered voters who live in Pennsylvania legislative districts where their voting and representational rights are diluted by prison-based gerrymandering, these UPenn NAACP members are aggrieved by Respondents' refusal to assure them equal voting and representational rights as compared to other Pennsylvania voters, including those who happen to be located in areas with prisons. Therefore, these members have—and the UPenn NAACP, in its associational capacity, has—a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

65. **The Progressive NAACP**, located on Temple University's campus in Philadelphia, is a non-profit, non-partisan organization with approximately 30

members, all of whom are Temple students.<sup>8</sup> The mission of the Progressive NAACP is to ensure the political, educational, social, and economic equality of rights of all persons in the university community as well as the North Philadelphia area and to eliminate racial hatred and discrimination. Many members of the Progressive NAACP are Pennsylvania registered voters in and residents in state legislative districts that are harmed by prison-based gerrymandering, including members who reside in Pennsylvania HDs 164, 179, 181, 190, 192, 195, and 203, among others.

66. These districts do not contain prisons, and a disproportionate number of the districts' permanent residents are counted for redistricting purposes at prisons in other legislative districts where they are temporarily incarcerated. As a result, Progressive NAACP members who reside and are registered to vote in these districts are suffering immediate and irreparable injury because of the present and continuing dilution of their voting and representational rights caused by prison-based gerrymandering. These Progressive NAACP members have a substantial, direct, and immediate interest in obtaining a declaratory judgment that the practice violates the Pennsylvania Constitution and an injunction preventing the Commonwealth

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<sup>8</sup> All members of the Progressive NAACP are also members of the national NAACP and the Pennsylvania NAACP.

from continuing the practice in the reapportionment cycle commencing after the 2020 U.S. Census.

67. The Progressive NAACP’s membership includes individuals who have turned 18 and become qualified to vote in the years since the Commonwealth of Pennsylvania adopted and implemented its current apportionment plan for the General Assembly.

68. The Progressive NAACP brings this action in its associational capacity on behalf of its members who are harmed by prison-based gerrymandering. As registered voters who live in Pennsylvania legislative districts where their voting and representational rights are diluted by prison-based gerrymandering, these Progressive NAACP members are aggrieved by Respondents’ refusal to assure them equal voting and representational rights as compared to other Progressive voters. Therefore, these members have—and the Progressive NAACP, in its associational capacity, has—a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

69. **The University of Pennsylvania Chapter of Beyond Arrest: Rethinking Systematic-Oppression (“UPenn BARS”)** is a student organization at the University of Pennsylvania with over 300 members. The UPenn chapter is the oldest of three chapters of BARS, which was founded in the spring of 2017. Through

advocacy in collaboration with other student groups, speaker series, and service initiatives relating to issues at the intersection of race, gender, and socioeconomic status, UPenn BARS promotes reform of the criminal justice system.

70. Many members of UPenn BARS are Pennsylvania registered voters and residents in state legislative districts that are harmed by prison-based gerrymandering, including members who reside in HDs 188 and 190, among others.

71. Chinaechelum Vincent, an undergraduate in her senior year at the University of Pennsylvania and a member of UPenn BARS, is registered to vote in HD 190. UPenn BARS members Morgan Smalls and Greer Bizzell-Hatcher, who are both undergraduates in their junior years at the University of Pennsylvania, are registered to vote at their homes in HD 188. HDs 188 and 190 are located entirely in Philadelphia. These districts do not contain prisons, and a disproportionate number of the districts' permanent residents are counted for redistricting purposes at prisons in other legislative districts where they are temporarily incarcerated. As a result, Ms. Vincent, Ms. Smalls, Ms. Bizzell-Hatcher, and other members of UPenn BARS are suffering immediate and irreparable injury because of the present and continuing dilution of their voting and representational rights caused by prison-based gerrymandering. These UPenn BARS members have a substantial, direct, and immediate interest in obtaining a declaratory judgment that the practice violates Pennsylvania's Constitution and an injunction preventing the Commonwealth from

continuing the practice in the reapportionment cycle commencing after the 2020 U.S. Census.

72. Ms. Vincent, Ms. Smalls, Ms. Bizzell-Hatcher, and other members of UPenn BARS have turned 18 and become qualified to vote in the years since the Commonwealth of Pennsylvania adopted and implemented its current apportionment plan for the General Assembly. For example, Ms. Vincent turned 18 in 2016 and registered to vote in Pennsylvania that same year. Ms. Smalls turned 18 in 2017 and registered to vote in Pennsylvania in 2018, the first election for which she was eligible. Ms. Bizzell-Hatcher turned 18 in 2017 and registered to vote in Pennsylvania in 2019.

73. UPenn BARS brings this action in its associational capacity on behalf of its members who are harmed by prison-based gerrymandering, including the individuals identified herein. As registered voters who live in Pennsylvania legislative districts where their voting and representational rights are diluted by prison-based gerrymandering, these UPenn BARS members are aggrieved by Respondents' refusal to assure them equal voting and representational rights as compared to other Pennsylvania voters. Therefore, these members have—and UPenn BARS, in its associational capacity, has—a substantial, direct, and immediate interest in the outcome of this litigation and the present and future reapportionment plans for the General Assembly.

***B. Respondents***

74. **The Commonwealth of Pennsylvania's** capitol and seat of government is located in Harrisburg, Pennsylvania. Acting through the entities in which it has vested its legislative, judicial, and executive powers, Respondent Commonwealth has adopted, maintained, and enforced a series of legislative reapportionment plans—including those currently in force—that use prison-based gerrymandering, thereby diluting the electoral and representational rights of Pennsylvanians who live in urban districts, including Petitioners.

75. **Thomas W. Wolf** is the Governor of Pennsylvania and is sued only in his official capacity. As Governor, Respondent Wolf is vested with the supreme executive power of the Commonwealth of Pennsylvania and is responsible for taking care that the laws of Pennsylvania be faithfully executed. Thus, Respondent Wolf is responsible for faithfully executing the Commonwealth's legislative apportionment plans, which rely on the practice of prison-based gerrymandering. The Governor is also responsible for enforcing and faithfully executing Article I, Section 5 and Article II, Section 16 of the Pennsylvania Constitution and has solemnly sworn an oath of office to “support, obey and defend . . . the Constitution of this Commonwealth.” Pa. Const. art VI, § 3. In addition, Governor Wolf is responsible for faithfully executing the residency standards of 25 Pa. Cons. Stat. § 1302.



76. **Kathy Boockvar** is the Secretary of the Commonwealth of Pennsylvania and is sued only in her official capacity. In that capacity, the Secretary is the Commonwealth's highest election official and is responsible for the supervision and administration of the Commonwealth's elections and electoral process. Like Governor Wolf, Secretary Boockvar has solemnly sworn an oath of office to "support, obey and defend . . . the Constitution of this Commonwealth," including Article I, Section 5 and Article II, Section 16. As Secretary of the Commonwealth, Respondent Boockvar is the Commonwealth official most clearly responsible for carrying out Article I, Section 5's command that "[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."

### **JURISDICTION**

77. This Court has original jurisdiction over this action pursuant to 42 Pa. Cons. Stat. § 761(a), because it is a civil action against officers of the Commonwealth government acting in their official capacities.

78. This Court also has original jurisdiction pursuant to the Declaratory Judgments Act, 42 Pa. Cons. Stat. §§ 7531-7541. Such jurisdiction is established because this action challenges Respondents' interpretations of Article I, Section 5 and Article II, Section 16 of the Pennsylvania Constitution and 25 Pa. Cons. Stat §

1302(a)(3) and prays this Court to vindicate Petitioners’ rights under each of these provisions.

## FACTUAL ALLEGATIONS

### A. *The Impact of Prison-Based Gerrymandering on Political Rights and Racial Equality*

79. For decades, Pennsylvania’s practice of prison-based gerrymandering—of counting incarcerated people, for redistricting purposes, as residents of the prisons where they are involuntarily and often temporarily incarcerated—has artificially enhanced the political power and access to representation of people who live in districts that contain correctional facilities at the expense of all other Pennsylvanians.

80. But incarceration rates in Pennsylvania have ballooned in the last 40 years.<sup>9</sup> In 1980, the Commonwealth incarcerated a total of 8,112 people.<sup>10</sup> As of December 31, 2019, that number was 45,875—almost 6 times higher.<sup>11</sup>

81. Of the 24 state prisons currently in operation in Pennsylvania, all but five opened after 1977.<sup>12</sup>

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<sup>9</sup> The Sentencing Project, *State-by-State Data: Pennsylvania, Prison Population Over Time*, <https://www.sentencingproject.org/the-facts/#map?dataset-option=SIR> (last visited Feb. 26, 2020) (when on the home page, click on the state of Pennsylvania to view state data over time).

<sup>10</sup> *Id.*

<sup>11</sup> Pa. Dep’t of Corrections, *Inmate Statistics* (Dec. 31, 2019), <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2019%20Inmate%20Profile.pdf>.

<sup>12</sup> Pa. Dep’t of Corrections, *Facilities: State Prisons*, <https://www.cor.pa.gov/Facilities/StatePrisons/Pages/default.aspx> (last visited Feb. 26, 2020).

82. The impacts of these increasing incarceration rates have not been evenly distributed across the Commonwealth's population. Pennsylvania disproportionately incarcerates its Black and Latino residents in prisons predominantly located in rural districts. These disparate outcomes are connected to: a school-to-prison pipeline; socioeconomic disparities in access to employment, housing opportunities, and healthcare; and racial inequities in arrests and the lengths of prison sentences, as well as other factors such as implicit bias, stereotypes in decision-making, and the over-policing in communities of color.<sup>13</sup>

83. According to the Census Bureau, Pennsylvania's overall population is 76.1 percent non-Hispanic white, 12 percent Black, and 7.6 percent Latino.<sup>14</sup> Yet, as of December 31, 2019, almost half—46 percent—of the people held in Pennsylvania state prisons are Black.<sup>15</sup> Nine percent are Latino.<sup>16</sup> Only 44 percent are white.<sup>17</sup>

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<sup>13</sup> See generally, The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

<sup>14</sup> U.S. Census Bureau, *QuickFacts: Pennsylvania*, <https://www.census.gov/quickfacts/PA> (last visited Feb. 26, 2020).

<sup>15</sup> Pa. Dep't of Corrections, *Inmate Statistics*, *supra* note 11.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

84. A Black person in Pennsylvania is almost nine times more likely to be incarcerated than a white person—the seventh highest such disparity in the country.<sup>18</sup>

85. Pennsylvania also disproportionately incarcerates its urban residents. According to the Pennsylvania Department of Corrections (“DOC”), approximately 26 percent of Pennsylvania’s prison population comes from Philadelphia, even though only 12 percent of Commonwealth’s overall population lives in that city.<sup>19</sup>

86. At the same time, Pennsylvania has chosen to locate prisons in lightly populated, rural areas with populations comprised predominantly of white residents. More than 95 percent of incarcerated people in the Commonwealth are imprisoned in locations outside of Philadelphia.<sup>20</sup> Across the Commonwealth, the vast majority of incarcerated Pennsylvanians are imprisoned in counties whose populations are more predominantly white than the Commonwealth as a whole.<sup>21</sup>

87. For example, the population of Greene County, in which SCI Greene is located—and where the Commonwealth’s current legislative districts count

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<sup>18</sup> The Sentencing Project, *State-by-State Data: Black-White Disparity* <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=BWR> (last visited Feb. 26, 2020).

<sup>19</sup> Pa. Dep’t of Corrections, *Inmate Statistics*, *supra* note 11.

<sup>20</sup> Peter Wagner & Elena Lavarreda, *Importing Constituents: Prisoners and Political Clout in Pennsylvania*, Prison Policy Initiative (June 26, 2009), <https://www.prisonersofthecensus.org/pennsylvania/>.

<sup>21</sup> *Id.*; see also Pa. Dep’t of Corrections, *Current Monthly Population Report*, <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Current%20Monthly%20Population.pdf> (last visited Feb. 26, 2020).

Petitioners Holbrook and Lateef as residing—is 93.5 percent non-Hispanic white, 3.4 percent Black, and 1.6 percent Latino.<sup>22</sup>

88. By contrast, Philadelphia’s population is 34.6 percent non-Hispanic white, 42.3 percent Black, and 14.5 percent Latino.<sup>23</sup>

89. Because of prison-based gerrymandering, the predominantly Black and Latino residents of urban areas that a disproportionate number of incarcerated people call home, such as Philadelphia, have diminished influence over Commonwealth affairs and diminished voting power as compared to the predominantly white residents of rural areas—and especially those that contain prisons, such as Greene County.

90. Counting incarcerated individuals as residents of the electoral districts where they are imprisoned increases the political strength of predominantly white rural communities at the expense of the political strength of predominantly Black and Latino urban communities.

91. Two professors at Villanova University, Brianna Remster and Rory Kramer, recently published a peer-reviewed paper explicating this point. According to their analysis, prison-based gerrymandering inflates the political power of the

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<sup>22</sup> U.S. Census Bureau, *QuickFacts: Greene County, Pennsylvania*, <https://www.census.gov/quickfacts/fact/table/greencountypennsylvania/PST045219> (last visited Feb. 26, 2020).

<sup>23</sup> U.S. Census Bureau, *QuickFacts: Philadelphia City, Pennsylvania*, <https://www.census.gov/quickfacts/fact/table/philadelphiacitypennsylvania/PST045219> (last visited Feb. 26, 2020).

average white person in Pennsylvania, while diluting the political power of the average Black or Latino person in Pennsylvania.<sup>24</sup>

**B. *Incarcerated People are Not Legally or Practically Residents of the Districts Where They Are Incarcerated***

92. Although incarcerated people are allocated to legislative districts based on the locations in which they are imprisoned, they are not in practice represented by the legislators who serve those districts. Under Pennsylvania law, incarcerated people do not accrue residency in the districts where they are incarcerated, *see* 25 Pa. Cons. Stat. § 1302(a)(3).

93. Incarcerated people lack meaningful indicia of residency or domicile in their jurisdictions of incarceration, such as a voluntary intent to remain there.

94. Incarcerated people are physically isolated from the communities adjacent to correctional facilities. They cannot visit or patronize public or private establishments, such as parks, churches, and businesses in their surrounding communities. They cannot visit the local offices of these districts' legislative representatives.

95. Pennsylvanians incarcerated in districts far from their homes also have much less of a stake in policy debates in the communities surrounding the prisons where they are held than the permanent residents with whom they share a district.

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<sup>24</sup> Briana Remster & Rory Kramer, *Shifting Power: The Impact of Incarceration on Political Representation*, 15 Du Bois Review 417, 430 (2018).

Incarcerated people cannot make use of public municipal services such as public transportation. They cannot send their children to public schools in the cities or towns where they are imprisoned.

96. On information and belief, legislators do not typically visit or provide constituent services to people incarcerated in their districts. As Atiba Kwesi, who was incarcerated in Pennsylvania for many years, stated to *The Philadelphia Inquirer* in July 2019, “Politicians don’t come to the prisons to talk to [incarcerated people] about what’s going on in the prisons.”<sup>25</sup>

97. By contrast, on information and belief, legislators who represent urban districts often *do* treat incarcerated people who come from their districts as legitimate constituents—even when they are incarcerated far away from the district. Legislators recognize that incarcerated people maintain ties in the communities where they grew up, where their families and loved ones live, and where they are overwhelmingly likely to return after serving their sentences, as explained below.

98. For example, State Rep. Morgan B. Cephas, who represents HD 192 in Philadelphia, has visited the Muncy State Correctional Institution—which is located more than 150 miles west of Philadelphia in Lycoming County—several times in

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<sup>25</sup> Jonathan Lai, *How ‘prison gerrymandering’ shifts political power from urban Pennsylvanians of color to white, rural ones*, *Phila. Inquirer* (July 11, 2019), <https://www.inquirer.com/politics/pennsylvania/prison-gerrymandering-pa-2021-redistricting-census-20190725.html>.

recent years.<sup>26</sup> In March of 2019, Rep. Cephas announced that she planned to introduce legislation to improve conditions for incarcerated women in Pennsylvania because she had “heard the cries for help” from women imprisoned at SCI Muncy.<sup>27</sup>

99. For all of these reasons, the status of incarcerated people with respect to the communities in which they are imprisoned is not similar to other categories of transient or temporary residents. As courts have recognized, incarcerated people are in a drastically different situation than others who live in short-term housing or group quarters, such as college students or members of the military. Unlike incarcerated people, for example, “college students and military personnel have the liberty to interact with members of the surrounding community and to engage fully in civic life. In this sense, both groups have a much more substantial connection to, and effect on, the communities where they reside than do prisoners.” *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 896 (D. Md. 2011), *aff’d*, 567 U.S. 930 (2012). These differences underline the unique absence of any residential nexus between incarcerated people and the districts where they are imprisoned.

100. The status of incarcerated people also differs from that of other people who are not eligible to vote, such as people under the age of 18 and people who are

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<sup>26</sup> Sara Hoover, *Female Pa. lawmakers hope to help incarcerated women with series of bills*, Why.org (July 19, 2018), <https://why.org/articles/female-pa-lawmakers-hope-to-help-incarcerated-women-with-series-of-bills/>.

<sup>27</sup> Rep. Morgan B. Cephas, *Legislative package would help incarcerated women, parents in Pa.* (March 27, 2019), <http://www.pahouse.com/Cephas/InTheNews/NewsRelease/?id=105970>.



not citizens. “Prisoners are not like minors, or resident aliens, or children—they are separated from the rest of society and mostly unable to participate in civic life.” *Calvin v. Jefferson Cty. Bd. of Commissioners*, 172 F. Supp. 3d 1292, 1324 (N.D. Fla. 2016).

101. By contrast, incarcerated people overwhelmingly *do* retain indicia of residency and domicile in the districts where they lived before being incarcerated.

102. Studies show that, upon release, approximately half of all incarcerated people return to the same community they lived in prior to their incarceration; the vast majority return to neighborhoods in urban communities—they do not remain in the areas where they were imprisoned.<sup>28</sup> This is especially so for incarcerated people who are released on parole, who must find someone willing to provide them with “living quarters” for the first six months after their release, subject to approval by the Pennsylvania Board of Probation and Parole.<sup>29</sup>

103. On information and belief, the people who most commonly agree to provide “living quarters” to people returning from incarceration on parole include family members and friends who live in either the same address where the returning

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<sup>28</sup> Urban Institute, Justice Policy Center, *Returning Home Study: Understanding the Challenges of Prisoner Reentry*, <https://www.urban.org/policy-centers/justice-policy-center/projects/returning-home-study-understanding-challenges-prisoner-reentry> (“Significant portions of returning prisoners are clustered in a handful of neighborhoods with high levels of social and economic disadvantage.” (citation omitted)) (last visited Feb. 26, 2020).

<sup>29</sup> Pa. Bd. of Probation & Parole, *Statement of Residence* (last visited Feb. 19, 2020), <https://www.pbpp.pa.gov/Parole%20Supervision/Interstate%20Probation%20and%20Parole/Documents/PBPP-1%20FOR%20WEB.pdf>.

person resided pre-incarceration, or another address within the same neighborhood and within the same legislative district.

104. Further, while they are in prison, incarcerated people often maintain strong ties to their families who live in the districts they continue to call home.<sup>30</sup> Despite significant obstacles and expense, families often visit their loved ones who are incarcerated, speak with them regularly by phone, and are frequently the primary source of financial support for incarcerated individuals after they are released.<sup>31</sup>

105. Pennsylvania’s DOC expressly encourages incarcerated individuals to retain ties to their home communities, encouraging individuals in prison to “maintain connections to your family, religious or community organizations” who “may help you find a place to live and a job” and can otherwise “help you after you return home.”<sup>32</sup>

106. Incarcerated people have an ongoing stake in the local policy decisions in their home communities—decisions that will affect their lives and the lives of their loved ones both during and after their period of incarceration.

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<sup>30</sup> Urban Institute, *supra* note 28 (“Family members are the greatest anticipated source of financial resources, housing, and emotional support before prisoners are released, and families provide the greatest tangible and emotional support after release.” (citations omitted)).

<sup>31</sup> Bernadette Rabuy & Daniel Kopf, *Separation by Bars and Miles: Visitation in state prisons*, Prison Policy Initiative, (Oct. 20, 2015), <https://www.prisonpolicy.org/reports/prisonvisits.html>.

<sup>32</sup> Pa. Dep’t of Corrections & Pa. Bd. of Probation & Parole, *Handbook for Parolees: Your Guide to Success in Prison and in the Community* 4 (Feb. 2019), <https://www.cor.pa.gov/parole-supervision/Documents/Parole%20Publications/Final%20Parole%20Handbook.pdf>.

107. The vast majority of incarcerated people are only temporarily located in their prison districts. A 2012 report showed that the average duration of a prison sentence in Pennsylvania is 3.8 years.<sup>33</sup>

108. And, on information and belief, the average time an incarcerated person spends in any particular prison location is even shorter, because incarcerated people in Pennsylvania are often transferred among different prison facilities during their period of incarceration. As a result, even incarcerated people serving long sentences are unlikely to be imprisoned in the legislative districts to which they are assigned through application of prison-based gerrymandering for the decade during which maps are in place. Yet Respondents count incarcerated people as residents of prisons for the full apportionment decade.

109. In Pennsylvania, most imprisoned people cannot vote, giving them no voice in the districts to which their share of political representation is allocated. Those incarcerated for felony offenses—who are a majority of the Commonwealth’s prison population—are ineligible to vote under Pennsylvania law. 25 Pa. Cons. Stat. § 1301(a); *see* 25 Pa. Cons. Stat. and Cons. Stat. Ann. §§ 2602(w), 3146.1 (West).

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<sup>33</sup> Pew Center on the States, *Time Served: The High Cost, Low Return of Longer Prison Terms* 3 (June 2012), [https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing\\_and\\_corrections/prisontimeservedpdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/prisontimeservedpdf.pdf).

110. Pennsylvania law treats the few incarcerated people who *are* eligible to vote, such as people convicted of misdemeanors and people in pretrial detention, as residents of their pre-incarceration domiciles who may vote by absentee ballot. When an incarcerated person is eligible to vote but was not registered before being imprisoned, he or she is deemed to reside at his or her last known address before confinement. *See* 25 Pa. Cons. Stat. § 1302(a)(3). A penal institution cannot be used as an address for registering to vote.<sup>34</sup>

111. In fact, Pennsylvania law makes explicit that incarcerated people do not and cannot accrue residency in the electoral districts in which they are incarcerated. 25 Pa. Cons. Stat. § 1302(a)(3) provides: “No individual who is confined in a penal institution shall be deemed a resident of the election district where the institution is located. The individual shall be deemed to reside where the individual was last registered before being confined in the penal institution, or, if there was no registration prior to confinement, the individual shall be deemed to reside at the last known address before confinement.”

112. Section 1302(a)(3) provides a clear and specific rule that bars incarcerated people from being counted as residents of the prisons where they are held against their will for electoral purposes. Moreover, it is consistent with the

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<sup>34</sup> Pa. Dep’t of State, *Voting Rights of Convicted Felons, Convicted Misdemeanants and Pretrial Detainees* 3, [https://www.votespa.com/Register-to-Vote/Documents/Convicted\\_felon\\_brochure.pdf](https://www.votespa.com/Register-to-Vote/Documents/Convicted_felon_brochure.pdf) (last visited Feb. 26, 2020).

general legal principle that presence in a given location, without voluntary intent to remain and be domiciled there, is insufficient to establish domicile. *See In re Lesker*, 377 Pa. 411, 419, 105 A.2d 376, 380 (1954).<sup>35</sup>

113. As these considerations show, incarcerated people are, in legal and practical respects, far more connected to their pre-incarceration home districts, where they generally have “the intention of returning[,]” *see* 25 Pa. Cons. Stat. § 1302(b)(1), than they are to the district where they are involuntarily and often temporarily detained.

114. Prison-based gerrymandering deprives incarcerated people of their right to be represented in their true homes, forcibly allocating their share of political representation to an area where they lack meaningful connections, are effectively unrepresented, will not remain, and are held against their will.

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<sup>35</sup> *See also In re Stack*, 184 A.3d 591, 599 (Pa. Commw. Ct. 2018) (holding that the Lieutenant Governor did not establish domicile in Lebanon County by living in his official residence because “[n]o Lieutenant Governor may stay in the Lieutenant Governor’s official residence after his civil service to the State is completed.”); *Commonwealth, Dep’t of Pub. Welfare v. Kallinger*, 443 A.2d 1219, 1222 (Pa. Commw. Ct. 1982) (holding that “[w]hen a prisoner is committed, legal residency means the person’s domicile before incarceration.”); *see Zinn v. Zinn*, 475 A.2d 132, 133 (Pa. Super Ct. 1984) (“Mere absence from a domicile, however long continued, cannot effect a change of domicile; there must be an animus to change the prior domicile for another. . . . Furthermore, there is a presumption that the original domicile continues and a person asserting a change of domicile must demonstrate such change by clear and convincing proof.”) (citation omitted); *McKenna v. McKenna*, 422 A.2d 668, 670 (Pa. Super. Ct. 1980) (holding that domiciliary intent is the key consideration when an incarcerated person seeks to establish residency in a state for purposes of divorce laws, because “[b]ars may confine the body, but not the mind”); *Stifel v. Hopkins*, 477 F.2d 1116, 1124 (6th Cir. 1973) (holding that, without voluntary intent to remain, incarceration does not create residence in a state sufficient for federal diversity jurisdiction).

### C. *Prison-Based Gerrymandering in Pennsylvania's State-Legislative Map*

115. The current legislative districts for the Pennsylvania House of Representatives and the Pennsylvania Senate, based on 2010 census data, were adopted in 2012 and acquired the force of law in 2013.<sup>36</sup>

116. Article II, Section 16 of the Pennsylvania Constitution requires legislative districts to be “as nearly equal in population as practicable.”

117. After the 2010 census, the Census Bureau released counts of incarcerated individuals in each prison in advance of the Commonwealth's promulgation of a new reapportionment plan. This provided the Commonwealth with the opportunity to “leave [incarcerated people] counted where the prisons are, delete them from the redistricting formulas, or assign them to some other locale.”<sup>37</sup> Despite the constitutional mandate to fashion districts “as nearly equal in population as practicable,” the Commonwealth failed to use census data that would have enabled it to record incarcerated people as residents of their actual homes, rather than the prisons where they were involuntarily and often temporarily incarcerated.

118. The 2011-12 Legislative Reapportionment Commission, acting on behalf of the Commonwealth, chose to consider incarcerated people as residents of

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<sup>36</sup> See generally *Holt v. 2011 Legislative Reapportionment Comm'n*, 67 A.3d 1211 (Pa. 2013).

<sup>37</sup> Robert Groves, *So, How do You Handle Prisons?*, U.S. Census Bureau: Census Blogs (Mar. 1, 2010), <https://www.census.gov/newsroom/blogs/director/2010/03/so-how-do-you-handle-prisons.html>.

correctional facilities, despite being on notice of this practice’s vote-dilutive impact and representational harms.

119. In 2007, nine members of the Pennsylvania House of Representatives introduced a resolution urging an end to the “unfair” and “unsound” policy of “recording the residence of incarcerated persons [at] the location of the correctional facilities.” This resolution instead advocated that Pennsylvania count incarcerated people at their “the last known home address.”

120. The resolution was re-introduced in 2010 as House Resolution No. 593.

121. In June 2009, the Prison Policy Initiative released a study, *Importing Constituents: Prisoners and Political Clout in Pennsylvania*, which detailed how Pennsylvania’s prison-based gerrymandering “artificially enhances the representation afforded to predominantly white districts with prisons and waters down the voting power of everyone else.”<sup>38</sup>

122. In advance of the next scheduled reapportionment cycle, Respondents will again be provided with the information necessary to avoid improperly counting incarcerated individuals in prison-containing districts.

123. The Commonwealth’s prison-based gerrymandering practices are squarely prohibited by the Pennsylvania Constitution’s interconnected mandates that all elections must be free and equal and that the General Assembly must be elected

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<sup>38</sup> Wagner & Lavarreda, *Importing Constituents*, *supra* note 20.

from districts without unjustified population variances such as exist currently, as discussed below.

**D. *Because of Prison-Based Gerrymandering, Pennsylvania’s Prison-Containing Districts and Urban Districts Are Malapportioned.***

124. The Pennsylvania House of Representatives has 203 members, and the Pennsylvania Senate has 50 members, each of whom is elected by an individual district.

125. Under Pennsylvania’s Constitution, districts must be “as nearly equal in population as practicable” so that each person in the state has roughly the same voting strength and access to representation. Pa. Const. art II, § 16. Pennsylvania courts have interpreted that requirement to require that legislative apportionment plans minimize population variance across districts as much as practicable, while respecting other constitutional “imperatives in redistricting” such as compactness, contiguity, and respect for the integrity of political subdivisions—all of which “must be balanced” to create a constitutional plan. *Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711, 759 (Pa. 2012). Under these principles, significant deviations from population equality that are manifestly *not* necessary to satisfy competing constitutional imperatives cannot be justified.

126. The population-equality mandate of Article II, Section 16 of the Pennsylvania Constitution protects the same interests in electoral and representational equality as the federal “one-person, one vote” rule, but does so



through the Commonwealth's own constitutional charter. Both in the federal context and in Pennsylvania, the "one-person, one-vote" principle emerged to remedy precisely the types of harm that prison-based gerrymandering causes.

127. The one-person, one-vote principle was articulated against the backdrop of many states' persistent failures to reapportion their legislatures to account for rapid population growth in urban areas, which unfairly gave rural constituents artificially inflated voting power and had implications for racial groups. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 567 (1964) ("The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. Representation schemes once fair and equitable become archaic and outdated.").

128. The "ideal" population size in each district is defined by the total state population divided by the number of districts. In the Commonwealth's current reapportionment plan, based on 2010 census data, the ideal House district would contain 62,573 residents, and the ideal Senate district would contain 254,048 residents.

129. The largest current Pennsylvania House district, HD 71, was drawn with a population of 65,036.<sup>39</sup> The largest current Pennsylvania Senate District (“SD”), SD 33, was drawn with a population of 264,160.<sup>40</sup>

130. However, the populations of some districts in the Commonwealth’s current apportionment plan are improperly inflated by their inclusion of people who are imprisoned (often temporarily) in correctional facilities within those districts, and therefore do not legally or practically reside within those districts. Under Pennsylvania law, those individuals should be counted instead either “where the individual was last registered before being confined in the penal institution, or, if there was no registration prior to confinement, . . . at the last known address before confinement.” 25 Pa. Cons. Stat. § 1302(a)(3).

131. This statute and Article I, Section 5, and Article II, Section 16 of the Pennsylvania Constitution require the Commonwealth to perform a simple, two-step adjustment to the data it receives from the Census Bureau before developing its reapportionment plans. First, incarcerated individuals must be removed from the population totals of the locations where they are imprisoned. Second, those

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<sup>39</sup> See Pa. Legislative Data Processing Center, *Composite Listing of House of Representatives Districts: LRC Final Adopted Plan, June 8, 2012*, <http://aws.redistricting.state.pa.us/Redistricting/Resources/GISData/Districts/Legislative/House/2011-Revised-Final/PDF/2011-Revised-Final-Plan-LegalDesc-House.pdf> (last visited Feb. 26, 2020).

<sup>40</sup> See Pa. Legislative Data Processing Center, *Composite Listing of State Senate Districts: LRC Final Adopted Plan, June 8, 2012*, <http://aws.redistricting.state.pa.us/Redistricting/Resources/GISData/Districts/Legislative/House/2011-Revised-Final/PDF/2011-Revised-Final-Plan-LegalDesc-House.pdf> (last visited Feb. 26, 2020).

individuals must be reallocated either to where they were last registered to vote or to their last known pre-incarceration address.

132. Data locating incarcerated people at their pre-incarceration addresses, upon information and belief, is available for all or most incarcerated people and is in the possession of Respondents, under the control of Respondents, or readily available to Respondents through judicial and administrative records, police records, and documents relating to parole eligibility. Even before obtaining such records from Respondents, however, home district of origin may be approximated by using public records detailing incarcerated people's counties of origin and other reliable and readily available statistical information, including Census data. This method yields population data that is far more accurate than the unadjusted Census data the Commonwealth has heretofore used for its redistricting plans.

133. Villanova University Professors Brianna Remster and Rory Kramer recently used available data to analyze the extent to which Pennsylvania's current legislative districts for the General Assembly would gain or lose population if imprisoned people were counted for redistricting purposes at the proper location. The scholars found that "after prisoners are returned to their pre-prison districts, four districts [HDs 179, 197, and 203 in Philadelphia and HD 71 in the Johnstown Metropolitan Statistical Area] are too big to be a district."<sup>41</sup> Professors Remster and

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<sup>41</sup> Remster & Kramer, *supra* note 24, at 428.

Kramer further found that, “were incarcerated persons counted in their communities, over 100,000 black residents of Philadelphia (roughly 20 percent of Philadelphia’s black population) would live in districts deemed too large for Pennsylvania’s districting to meet the Supreme Court’s equal representation standard.”<sup>42</sup>

134. Even performing only the first step of this required adjustment—that is, removing incarcerated people from the population counts of the districts where they are incarcerated—makes clear that the General Assembly’s current districts fail to satisfy population equality.

135. Two Pennsylvania House of Representatives Districts, in particular, are severely underpopulated, in that their populations (*exclusive* of incarcerated people) deviate by more than ten percent from the population of the largest House district, HD 71. Those districts are HDs 88 and 123.

136. **HD 88**, located in southern-central Pennsylvania, has been represented since 2009 by Representative Sheryl Delozier (R).

- According to the 2010 census, the district’s population is 88 percent white.
- The district is home to SCI Camp Hill, which in 2010 housed over 3,100 incarcerated people, who made up approximately 5 percent of the district’s recorded population.

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<sup>42</sup> *Id.* at 431.

- After subtracting those individuals from the district’s population, the district is 10.27 percent smaller than the largest state House district.

137. **HD 123**, located in eastern Pennsylvania, has been represented since 2003 by Representative Neal Goodman (D).

- According to the 2010 census, the district’s population is 90 percent white.
- The district is home to SCI Mahanoy and SCI Frackville, which in 2010 collectively housed over 3,500 incarcerated people, who made up approximately 6 percent of the district’s recorded population.
- After subtracting those individuals from the district’s population, the district is 11.19 percent smaller than the largest state House district.

138. Additionally, one Senate district, in particular, is severely underpopulated, in that its population (*exclusive* of incarcerated people) deviates by more than 10 percent from the population of the largest Senate district, SD 33.

139. **SD 34**, located in central Pennsylvania, has been represented since 1999 by Senator Jake Corman (R).

- According to the 2010 census, the district’s population is over 90 percent white.
- The district is home to SCI Rockview; SCI Benner Township; SCI Smithfield; and SCI Huntingdon, which in 2010 collectively housed

over 5,200 incarcerated people, who made up approximately 3.3 percent of the district's recorded population.

- After subtracting those individuals from the district's population, the district is 10.67 percent smaller than the largest state Senate district.

140. These population disparities would be far greater if incarcerated people were, as Pennsylvania's constitutional and statutory law demands, *both* removed from the districts of their incarceration *and* re-allocated to their pre-incarceration home communities.

**E. *The Harms Inflicted on Petitioners by Pennsylvania's Prison-Based Gerrymandering Scheme***

141. Because they reside in overpopulated Philadelphia legislative districts that are distorted and diluted by prison-based gerrymandering, Petitioners Holbrook, Lateef, Lewis, and Robertson and members of Petitioners NAACP, Pennsylvania NAACP, Philadelphia NAACP, UPenn NAACP, Progressive NAACP, and UPenn BARS have substantially less political representation than residents of underpopulated districts that contain prisons, such as HDs 88 and 123 and SD 34.

142. For example, the representative from HD 197, adjusted according to Remster and Kramer's analysis, represents at least 65,844 constituents, including incarcerated people who maintain permanent residences in the district. In stark contrast, the representative from HD 123 represents only 57,756 people, exclusive of people temporarily incarcerated in the district. Thus, after the populations of these

two districts are adjusted to reflect a conservative estimate of their actual constituents, the populations of these two districts deviate from each other by over 12 percent.

143. That means Petitioners—and indeed all Pennsylvanians who live in districts that do not contain penal institutions—must exert substantially greater efforts than the bona fide constituents of prison-containing districts to bring about a desired political outcome and get the attention of their representatives. Put simply, Petitioners’ votes count for less. They also must compete with a greater number of people for legislative services, including their community members who are incarcerated elsewhere.

144. Petitioners Holbrook, Lateef, Lewis, and Robertson and Petitioner organizations’ individual-voter members suffer a dilution of their voting strength and denial or diminution of their representational access as a result of Respondents’ prison-based gerrymandering practices. The Petitioner organizations also have other members who live in Pennsylvania and are not eligible voters, but are nonetheless harmed by Pennsylvania’s legislative districts, insofar as those members are denied representational equality as compared to residents of prison-containing districts.

## CAUSES OF ACTION

### Count I

#### **Violation of the Pennsylvania Constitution's Free and Equal Elections Clause, Article I, § 5**

145. Petitioners reallege and incorporate by reference the allegations contained in the previous paragraphs of this Petition for Review as though fully set forth herein.

146. Article I, Section 5 of the Pennsylvania Constitution—the Free and Equal Elections Clause—provides: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

147. The Free and Equal Elections Clause governs “all aspects of the electoral process.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 814 (Pa. 2018).

148. The “overarching objective” of the Free and Equal Election Clause is to “prevent dilution of an individual’s vote by mandating that the power of his or her vote in the selection of representatives be equalized to the greatest degree possible with all other Pennsylvania citizens.” *Id.* at 817.

149. This provision endows every Commonwealth voter with the right to an “equally effective power to select the representatives of his or her choice, and bars the dilution of the people’s power to do so.” *Id.* at 814. It prohibits the



Commonwealth from taking actions or adopting, maintaining, or employing practices that have the effect of “impermissibly lessening the power of an individual’s vote based on the geographical area in which the individual resides.” *Id.* at 816.

150. Respondents’ practice of adopting, maintaining, and conducting elections under legislative apportionment maps for the General Assembly that count incarcerated individuals as residents of the districts where they are imprisoned, rather than where they maintain family and community ties, are effectively represented, and are likely to return, and retain residency for electoral purposes under Pennsylvania law, unconstitutionally dilutes the voting strength and political influence of Petitioners and other persons who reside in legislative districts that do not contain prisons.

151. Solely because they live in geographical areas that do not contain prisons and where a disproportionate number of individuals who often are temporarily confined elsewhere in the Commonwealth actually and legally reside, Petitioners Holbrook, Lateef, Lewis, and Robertson and Petitioners NAACP, Pennsylvania NAACP, Philadelphia NAACP, UPenn NAACP, Progressive NAACP, and UPenn BARS, through their members, suffer the direct, substantial, and immediate harm of having their voting strength diluted relative to other

Commonwealth voters, especially as compared to Commonwealth voters who live in the districts where prisons are located.

152. Respondents’ practice of prison-based gerrymandering thus inflates the voting strength and political influence of voters residing in districts that contain prisons and dilutes the voting strength and political influence of all other voters in the Commonwealth—especially those who, like Petitioners Lateef, Lewis, and Robertson and members of Petitioners NAACP, Pennsylvania NAACP, Philadelphia NAACP, UPenn NAACP, Progressive NAACP, and UPenn BARS, reside in urban districts from which a disproportionate number of incarcerated people come—in direct violation of the constitutional requirement that all Commonwealth votes be “accord[ed] equal weight to the votes of residents in each of the various districts in determining the ultimate composition of the state legislature.” *League of Women Voters*, 178 A.3d at 814.

153. Consequently, Petitioners and other Pennsylvania voters who reside in diluted legislative districts have substantially reduced power to make a marginal impact on election outcomes and face greater numerical barriers to petitioning their representatives to be responsive to their individual interests or policy preferences. By their nature, these constitutional harms are visited upon Petitioners not only during legislative elections or at the moment when new redistricting maps are created, but presently, imminently, and continuously.

154. For the foregoing reasons, Respondents' practice of prison-based gerrymandering violates Article I, Section 5 of the Pennsylvania Constitution.

## **Count II**

### **Violation of the Pennsylvania Constitution's Equal Population Mandate for General Assembly Districts, Article II, § 16**

155. Petitioners reallege and incorporate by reference the allegations contained in the previous paragraphs of this Petition for Review as though fully set forth herein.

156. Article II, Section 16 of the Pennsylvania Constitution provides in relevant part: "The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be . . . as nearly equal in population as practicable."

157. Article II, Section 16 of the Pennsylvania Constitution requires the Commonwealth's legislative apportionment plans for the General Assembly to achieve population equality as nearly as practicable while heeding traditional "imperatives in redistricting," such as compactness, contiguity, and respect for the integrity of political subdivisions, all of which "must be balanced" to create a constitutional plan. *Holt v. 2011 Legislative Reapportionment Comm'n*, 38 A.3d 711, 759 (Pa. 2012). Under these principles, inter-district deviations from equal population are permissible only to the extent that they are necessary to satisfy the "multiple commands in Article II, Section 16," that maps be "contigu[ous],

compact[], and [not unnecessarily injurious to] the integrity of political subdivisions.” *Id.* at 760.

158. Nothing in Pennsylvania’s constitutional or statutory law requires—or, indeed, *permits*—Respondents to count incarcerated people as residents of the districts where they are imprisoned for voting or apportionment purposes. To the contrary, doing so is incompatible with Commonwealth law, 25 Pa. Cons. Stat. § 1302, under which incarcerated people remain residents of their pre-incarceration home districts. Thus, the unlawful practice of counting incarcerated people as residents of the districts in which they are imprisoned cannot be a legitimate basis for failing to comply with Article II, Section 16’s mandate that the Commonwealth’s legislative districts be as nearly equal in population as practicable.

159. There is no set threshold under the Pennsylvania Constitution determining how much population deviation among districts is permissible. Clearly, however, the population deviations of over 10 percent present in Pennsylvania’s current legislative districts (even before re-allocating imprisoned persons to their proper districts), which are caused directly and exclusively by the misallocation of imprisoned people, are not necessary to satisfy any other constitutional requirement, and cannot be justified under the “one-person, one-vote” principles enshrined in Article II, Section 16, of the Pennsylvania Constitution.

160. Respondents' practice of drawing and maintaining district boundaries that rely on counting incarcerated individuals where they are involuntarily imprisoned violates Pennsylvania's constitutional requirement of population equality. This practice impermissibly bestows upon residents of districts that contain prisons and are therefore home to fewer actual constituents and fewer eligible voters, such as HDs 88, and 123 and SD 34, a greater power to elect representatives and receive the benefits of such representation than is enjoyed by Petitioners and other voters and residents who live in diluted urban districts.

161. If Respondents reallocated incarcerated people to their true home districts (or where they were last registered to vote), consistent with the express definition of residence in 25 Pa. Cons. Stat. § 1302, the population variances among the Commonwealth's legislative districts would be far greater than the existing deviations, which already exceed 10percent in several cases.

162. These population deviations cannot be justified under Pennsylvania law. It would be possible to reapportion the Commonwealth based on appropriately adjusted Census data that allocates incarcerated individuals to their pre-incarceration home residences (or last known place where registered to vote) while satisfying all constitutional districting principles, including complying with Article I, Section 5 and Article II, Section 16. Counting incarcerated individuals where they are

imprisoned is unnecessary to achieve contiguity or compactness or to maintain the integrity of political subdivisions.

163. For the foregoing reasons, Respondents' practice of prison-based gerrymandering and violates Article II, Section 16 of the Pennsylvania Constitution.

**Count III**  
**Violation of 25 Pa. Cons. Stat. § 1302(a)(3)**

164. Petitioners reallege and incorporate by reference the allegations contained in the previous paragraphs of this Petition for Review as though fully set forth herein.

165. For the foregoing reasons, Respondents' practice of prison-based gerrymandering violates 25 Pa. Cons. Stat. § 1302(a)(3).

**PRAYER FOR RELIEF**

166. WHEREFORE, Petitioners respectfully pray that this Court enter judgment in their favor and against Respondents, and:

- a. Declare that the current apportionment plan for the Pennsylvania General Assembly is unconstitutional because it violates the rights of Petitioners and all other residents of malapportioned districts who are eligible to vote under the Pennsylvania Constitution's Free and Equal Elections Clause, Art. I, § 5;
- b. Declare that the current apportionment plan for the Pennsylvania General Assembly is unconstitutional because it violates the

rights of Petitioners and all other residents of malapportioned districts, regardless of whether they are eligible to vote, under the Pennsylvania Constitution's Equal Population Requirement for General Assembly Districts, Art. II, § 16;

- c. Declare that the current apportionment plan for the Pennsylvania General Assembly violates 25 Pa. Cons. Stat. § 1302(a)(3);
- d. Declare that any future apportionment plan for the Pennsylvania General Assembly, in order to comply with the Pennsylvania Constitution's Free and Equal Elections Clause, Art. I, § 5, the Pennsylvania Constitution's Equal Population Mandate for General Assembly Districts, Art. II, § 16, and 25 Pa. Cons. Stat. § 1302(a)(3), must count imprisoned persons as residents of their pre-incarceration homes or last known (residential or voter-registration) addresses; and
- e. Permanently enjoin Respondents, their agents, officers, and employees from approving any future apportionment plan which is predicated upon counting imprisoned persons as residents of the districts in which they are incarcerated, rather than as residents of their pre-incarceration homes or last known (residential or voter-registration) address; and

f. Grant such other relief as may be just and proper.



Dated: February 27, 2020

/s/ Kahlil C. Williams

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Respectfully submitted,

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*Pro hac vice* motion forthcoming.

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forthcoming.

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\* Not admitted in Pennsylvania; admitted in Ohio. *Pro hac vice* motion forthcoming.

\*\* Not admitted in Pennsylvania; admitted in Maryland and the District of Columbia. *Pro hac vice* motion forthcoming.

## VERIFICATION

I, Robert L. Holbrook, 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. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

Signed: 

Dated: February 26, 2020

## VERIFICATION

I, Dominik Whitehead, on behalf of the National Association for the Advancement of Colored People, 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: \_\_\_\_\_

2/25/2020

**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2020 a true and correct copy of the foregoing Petition for Review was served on the following persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121 and 1514(c):

Service via by first-class mail addressed as follows:

**Commonwealth of Pennsylvania**  
Pennsylvania Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120

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

**Secretary Kathy Boockvar**  
Pennsylvania Department of State  
Office of the Secretary  
302 North Office Building  
Harrisburg, PA 17120

/s/ Kahlil C. Williams  
Kahlil C. Williams  
Pa. Bar ID 325468

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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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ROBERT L. HOLBROOK; ABD'ALLAH LATEEF;  
TERRANCE LEWIS; MARGARET ROBERTSON;  
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE; NAACP PENNSYLVANIA STATE  
CONFERENCE; PHILADELPHIA BRANCH OF THE  
NAACP; UNIVERSITY OF PENNSYLVANIA CHAPTER OF  
THE NAACP; PROGRESSIVE NAACP; and UNIVERSITY OF  
PENNSYLVANIA CHAPTER OF BEYOND ARREST: RE-  
THINKING SYSTEMATIC-OPPRESSION,

*Petitioners,*

v.

COMMONWEALTH OF PENNSYLVANIA; THOMAS W.  
WOLF, in his official capacity as Governor of Pennsylvania; and  
KATHY BOOCKVAR, in her official capacity as Secretary of the  
Commonwealth of Pennsylvania,

*Respondents.*

No. \_\_\_\_\_

**CERTIFICATE OF COMPLIANCE**

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

Dated: February 27, 2020

/s/ Kahlil C. Williams  
Kahlil C. Williams  
Pa. Bar ID 325468