

BEFORE THE SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

SENATOR JAY COSTA, SENATOR LAWRENCE M. FARNESE, JR., SENATOR CHRISTINE M. TARTAGLIONE, SENATOR SHIRLEY M. KITCHEN, SENATOR LeANNA M. WASHINGTON, SENATOR MICHAEL J. STACK, SENATOR VINCENT J. HUGHES, SENATOR ANTHONY H. WILLIAMS, SENATOR JUDITH L. SCHWANK, SENATOR JOHN T. YUDICHAK, SENATOR DAYLIN LEACH, SENATOR LISA M. BOSCOLA, SENATOR ANDREW E. DINNIMAN, SENATOR JOHN P. BLAKE, SENATOR RICHARD A. KASUNIC, SENATOR JOHN N. WOZNIAK, SENATOR JIM FERLO, SENATOR WAYNE D. FONTANA, SENATOR JAMES R. BREWSTER, and SENATOR TIMOTHY J. SOLOBAY,

Petitioners,

v.

2011 LEGISLATIVE REAPPORTIONMENT COMMISSION,

Respondent.

PETITION FOR REVIEW

**In The Nature Of An Appeal From The Final Plan Of
The 2011 Legislative Reapportionment Commission**

Pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution and Pennsylvania Rule of Appellate Procedure 3321, the Petitioners, Senator Jay Costa, Senator Lawrence M. Farnese, Jr., Senator Christine M. Tartaglione, Senator Shirley M. Kitchen, Senator LeAnna M. Washington, Senator Vincent J. Hughes, Senator Anthony H. Williams, Senator Judith L. Schwank, Senator John T. Yudichak, Senator Daylin

Leach, Senator Lisa M. Boscola, Senator Andrew E. Dinniman, Senator John P. Blake, Senator Richard A. Kasunic, Senator John N. Wozniak, Senator Jim Ferlo, Senator Wayne D. Fontana, Senator James R. Brewster, Senator Timothy J. Solobay, and Senator Michael J. Stack (“Petitioners”), in their capacities as elected officials and as individual voters in the Commonwealth of Pennsylvania, file this Petition for Review, seeking this Court’s review of the June 8, 2012 final reapportionment plan (“2012 Final Plan”) approved by the 2011 Legislative Reapportionment Commission (“Commission”). In support of the Petition, the Petitioners state as follows:

Statement Of Jurisdiction

1. The basis for the jurisdiction of this Court is Section 17(d) of Article 2 of the Pennsylvania Constitution and 42 Pa. C.S. 725(1), which provides that the Supreme Court shall have exclusive jurisdiction of appeals from final orders of certain constitutional and judicial agencies, including the Legislative Reapportionment Commission.

2. This appeal is addressed to the Court’s appellate jurisdiction and is in the nature of a petition for review, pursuant to Rule of Appellate Procedure 3321.

Identity Of Parties Seeking Review

3. Senator Jay Costa is the duly-elected State Senator for the 43rd District of Pennsylvania and a registered voter in Allegheny County, Pennsylvania. Senator Costa is the elected leader of the Senate Democratic Caucus and a member of the Commission. Senator Costa brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

4. Senator Lawrence M. Farnese, Jr. is the duly-elected State Senator for the 1st District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Farnese brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

5. Senator Christine M. Tartaglione is the duly-elected State Senator for the 2nd District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Tartaglione brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

6. Senator Shirley M. Kitchen is the duly-elected State Senator for the 3rd District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Kitchen brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

7. Senator LeAnna M. Washington is the duly-elected State Senator for the 4th District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Washington brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

8. Senator Michael J. Stack is the duly-elected State Senator for the 5th District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Stack brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

9. Senator Vincent J. Hughes is the duly-elected State Senator for the 7th District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania.

Senator Hughes brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

10. Senator Anthony H. Williams is the duly-elected State Senator for the 8th District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Williams brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

11. Senator Judith L. Schwank is the duly-elected State Senator for the 11th District of Pennsylvania and a registered voter in Berks County, Pennsylvania. Senator Schwank brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

12. Senator John T. Yudichak is the duly-elected State Senator for the 14th District of Pennsylvania and a registered voter in Luzerne County, Pennsylvania. Senator Yudichak brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

13. Senator Daylin Leach is the duly-elected State Senator for the 17th District of Pennsylvania and a registered voter in Montgomery County, Pennsylvania. Senator Leach brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

14. Senator Lisa M. Boscola is the duly-elected State Senator for the 18th District of Pennsylvania and a registered voter in Northampton County, Pennsylvania. Senator Boscola brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

15. Senator Andrew E. Dinniman is the duly-elected State Senator for the 19th District of Pennsylvania and a registered voter in Chester County, Pennsylvania. Senator Dinniman brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

16. Senator John P. Blake is the duly-elected State Senator for the 22nd District of Pennsylvania and a registered voter in Lackawanna County, Pennsylvania. Senator Blake brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

17. Senator Richard A. Kasunic is the duly-elected State Senator for the 32nd District of Pennsylvania and a registered voter in Fayette County, Pennsylvania. Senator Kasunic brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

18. Senator John N. Wozniak is the duly-elected State Senator for the 35th District of Pennsylvania and a registered voter in Cambria County, Pennsylvania. Senator Wozniak brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

19. Senator Jim Ferlo is the duly-elected State Senator for the 38th District of Pennsylvania and a registered voter in Allegheny County, Pennsylvania. Senator Ferlo brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

20. Senator Wayne D. Fontana is the duly-elected State Senator for the 42nd District of Pennsylvania and a registered voter in Allegheny County, Pennsylvania.

Senator Fontana brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

21. Senator James R. Brewster is the duly-elected State Senator for the 45th District of Pennsylvania and a registered voter in Allegheny County, Pennsylvania. Senator Brewster brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

22. Senator Timothy J. Solobay is the duly-elected State Senator for the 46th District of Pennsylvania and a registered voter in Washington County, Pennsylvania. Senator Solobay brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

Identity Of Respondent

23. The Respondent is the 2011 Legislative Reapportionment Commission.

24. Pursuant to Section 17(b) of Article 2 of the Pennsylvania Constitution, the Commission is composed of Senator Dominic Pileggi, the majority leader of the Senate; Senator Costa, the minority leader of the Senate; Representative Michael Turzai, the majority leader of the House of Representatives; Representative Frank Dermody, the minority leader of the House of Representatives; and the Honorable Stephen McEwen, the fifth member selected by this Court after the other four Commission members were unable to agree on a fifth member. Judge McEwen served as Chair of the Commission.

Determination To Be Reviewed

25. The determination for which the Petitioners seek review is the 2012 Final Plan of the Commission that was approved on June 8, 2012. A copy of the Final Plan for the Pennsylvania Senate and the map reflecting the Final Plan for the Pennsylvania Senate are attached as Appendices A and B. A copy of the Final Plan for the Pennsylvania House and the map reflecting the Final Plan for the House are attached as Appendices C and D.

Controlling Constitutional Provision

26. Section 16 of Article 2 of the Constitution states:

The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. **Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.**

Pa. Constit. Art. II, sect. 16 (emphasis supplied).

Relevant Procedural Background

27. Pursuant to Section 17(a) of Article 2 of the Pennsylvania Constitution, in 2011, the year following the Federal decennial census, the 2011 Legislative Reapportionment Commission was constituted for the purpose of reapportioning the Commonwealth.

28. Pursuant to Article 17(c) of Article 2 of the Pennsylvania Constitution, the Commission approved a preliminary reapportionment plan on October 31, 2011, by a 3 to 2 vote, with Commission Members Costa and Dermody dissenting. (“2011 Preliminary Plan”).

29. The Commission held two public hearings on the 2011 Preliminary Plan. During the course of the hearings citizens and government officials whose political subdivisions were split objected to the 2011 Preliminary Plan.

30. On December 12, 2011, the Commission held a public meeting to vote on a Final Plan. Before the Commission voted on the Final Plan, Senator Costa presented the Commission with an alternative plan which significantly reduced the number of municipal and county divisions. Senator Costa's amendment plan was defeated by a 3-2 vote (Costa and Dermody dissenting).

31. However, with a 4 to 1 vote, with Senator Costa as the lone dissenting vote, the Commission approved a Final Plan ("2011 Final Plan"). The 2011 Final Plan split a significant number of political subdivisions throughout the state.

32. Several parties, including Petitioners herein, filed appeals against the 2011 Final Plan. On January 25, 2012, this Court ruled that the 2011 Final Plan was contrary to law.

33. On February 3, 2012, this Court issued an 87 page majority opinion that emphasized the importance of each of the co-existing mandates of Article II, Section 16 of the Pennsylvania Constitution. *Holt v. 2011 Legislative Reapportionment Commission*, 38 A.3d 711 (Pa. 2012) ("*Holt v. LRC*"). This Court explained that the 2011 Final Plan was contrary to law because plans had been presented to the Commission that divided significantly fewer political subdivisions. This Court also noted that several Senatorial Districts were obviously non-compact.

34. This Court remanded the 2011 Final Plan to the Commission and ordered the Commission to draft a new plan consistent with its opinion.

35. Despite the thorough analysis provided by the Pennsylvania Supreme Court in *Holt v. LRC*, the Commission did not meet to discuss this Court's opinion or establish goals to be achieved upon remand.

36. On February 22, 2012, the Commission met to consider a new preliminary plan. The Commission conducted no business at the meeting because no Commission member was prepared to submit a preliminary plan, nor had any been developed.

37. After the adjournment of the February 22, 2012 meeting, the Commission briefly used a mediation process to help determine which senatorial district would be moved from Allegheny County to eastern Pennsylvania, as a result of statewide population shifts.

38. The brief mediation process was stopped and not replaced with any other decision making process. Instead, at the Chairman's direction, the other four members of the Commission began to draft preliminary plans with limited input from the other members.

39. The Commission scheduled a meeting for April 12, 2012 for the purpose of adopting a preliminary plan.

40. On April 12, 2012, one day before the scheduled vote, Senator Costa was presented with a copy of Senator Pileggi's proposed plan for the Pennsylvania Senate.

41. The next morning, members of the Commission were provided with the Chairman's proposed preliminary plan. Although the Chairman touted his plan as a "compromise" it was virtually identical to Senator Pileggi's Plan. The only notable

difference in the plans was the Chairman's proposal to relocate the 37th Senatorial District to Monroe County, rather than the 45th Senatorial District, as proposed in Senator Pileggi's proposed preliminary plan.

42. At the April 12, 2012 meeting, Senator Costa proposed a plan that reduced county splits substantially, but Senator Costa's amendment plan was defeated by a 3 to 2 vote (Costa and Dermody dissenting).

43. The Commission passed the Chairman's plan by a 4 to 1 vote, with Senator Costa as the lone dissenting vote ("2012 Preliminary Plan").

44. The Commission conducted public hearings on the 2012 Preliminary Plan on May 2 and May 7, 2012 and allowed for the submission of written comments and statements. The hearings were conducted only in Harrisburg and occurred shortly after the April 24, 2012 primary election.

45. During the course of the hearings, witnesses from across the Commonwealth again testified as to the importance of not dividing political subdivisions unless absolutely necessary. The witnesses identified unnecessary splits of political subdivisions in both the Senate and House plans.

46. At the hearings, witnesses presented the Commission with several plans that contained significantly fewer divisions of counties and municipalities and other statistical data which indicated the 2012 Preliminary Plan contained divisions of political subdivisions that were not absolutely necessary.

47. On May 14, 2012, Senator Costa filed Exceptions to the 2012 Preliminary Plan. The Commission failed to adequately address those Exceptions in the

formulation and adoption of the 2012 Final Plan, and the Exceptions are reflected in the challenges set forth in this Petition.

48. The Commission scheduled a public meeting for June 8, 2012, to vote on a final plan.

49. Rather than developing a plan in a collective manner, the Commission advised its individual members to submit a proposed final plan the day before the scheduled June 8, 2012 meeting.

50. On June 7, 2012, in the afternoon, Senator Pileggi provided Senator Costa with a proposed final plan entitled the “Senate Republican Caucus Proposed Final Plan.” Similarly, Senator Costa submitted a proposed plan to Senator Pileggi.

51. On June 8, 2012, Senator Pileggi proposed that the Senate Republican Caucus Proposed Final Plan be adopted as the 2012 final plan.

52. The Senate Republic Caucus Proposal Final Plan greatly altered the configuration of Senate District 38 in Allegheny County. Although the 2011 Preliminary Plan placed Senate District 38 in the northeastern quadrant of Allegheny County, the Republican Caucus Plan essentially retained Senate District 40 in the North Hills of Allegheny County and renumbered it as Senate District 38.

53. The drastic switch in Senate District 38 boundaries transformed the district into a non-competitive Republican seat. This was done without any notice or public input.

54. Before the Commission voted on Senator Pileggi’s plan, Senator Costa presented a proposed amendment to the plan which provided the Commission with an opportunity to significantly reduce the number of county and municipal splits,

while meeting the other mandatory requirements of the Constitution (“Costa Amendment”). The Costa Amendment reduced County splits by 19 percent. The Commission voted against the Costa Amendment by a 3 to 2 vote (Costa and Dermody dissenting).

55. With a 4 to 1 vote (Costa dissenting), the Commission approved the Senate Republican Caucus Proposed Final Plan as the 2012 Final Plan. The Commission did not address whether it could remove various splits of political subdivisions in response to the evidence presented to it.

56. The presentment of the Costa Amendment, along with other statistical information concerning unnecessary splits of political subdivisions, established that the extent of political subdivision splits contained in the 2012 Final Plan, in both the Senate and House plans, was not absolutely necessary.

Factual Issues Relevant To Appeal

57. The Pennsylvania Constitution provides that, unless “absolutely necessary,” no county or municipality is to be divided when forming either a senatorial or representative district.

58. To achieve the goal of “one person, one vote,” the average senatorial district should contain approximately 254,000 residents, and the average House Plan should contain approximately 63,000 residents.

59. The Final Plan contains a significant number of divisions among political subdivisions which, as the Costa Amendment and other evidence presented to the Commission indicates, contain unnecessary divisions of political subdivisions.

60. The Costa Amendment shows that, as a whole, the 2012 Final Plan (Senate) contains a significant amount of unnecessary county divisions, including unnecessary divisions of the following counties: Berks, Beaver, Bucks, Butler, Chester, Cumberland, Franklin, Susquehanna, Warren and Washington, as compared to the 2012 Final Plan.

61. Further, the 2012 Preliminary Plan altered the 15th Senatorial District which consisted of most of Dauphin County, including the City of Harrisburg, the state capital and county seat of Dauphin County. The Preliminary Plan excluded Harrisburg from the 15th Senatorial District while the majority of Dauphin County remained in the 15th Senatorial District

62. Although the Final Plan included Harrisburg within the 15th Senatorial District, it completely altered the district from its historical footprint. The district was redrawn to include rural Perry County in its entirety and relocated a significant portion of Dauphin County to the 48th Senatorial District. The separation of a significant portion of Dauphin County from Harrisburg, the county seat, was not absolutely necessary.

63. Further, the inclusion of Perry County in the 15th Senatorial District led to the need to split Cumberland County into three districts, when no splits otherwise would have been required.

64. The 2012 Preliminary Plan also failed to improve the compactness of the 35th Senatorial District despite specific reference to the obvious non-compactness of the district by this Court.

65. The Commission did not address the compactness of the 35th Senatorial District in the 2012 Final Plan. The 35th Senatorial District is approximately 110 miles in length, longer than any other district in the Commonwealth. The Costa Amendment shows that the 35th Senatorial District could be much more compact while substantially reducing a number of subdivision splits throughout the Commonwealth.

66. The alterations to Senate Districts 15 and 38 were drastic and greatly deviated from the 2012 Preliminary Plan. The public and members of the Commission were denied an opportunity to address these substantial changes.

67. Like the Senate map, the House map contains numerous unnecessary splits of political subdivisions. These unnecessary splits have the effect of creating undue partisan advantage for one political party and have no constitutional justification.

Objections To The Final Reapportionment Plan

68. The Final Plan is contrary to law because it fails to conform to the requirement of the Pennsylvania Constitution that, unless absolutely necessary, no county or municipality shall be divided in the creation of a senatorial or representative district.

69. The Constitutional requirement that political subdivisions not be subject to division unless “absolutely necessary” is mandatory.

70. At no time did the Commission meet to analyze or discuss *Holt v. LRC* and how that decision should be considered in developing a new final plan on remand.

71. The Commission failed to establish a process whereby it could consider public comments and the requirements of the Pennsylvania Constitution or *Holt v. LRC* in developing a final plan.

72. The Commission failed to adopt a process by which a final plan could be discussed, reviewed and developed in a collective manner.

73. The Commission substantially altered the 2012 Preliminary Plan in respect to Senate Districts 15 and 38 without public process or review.

74. At no time did the Commission attempt to justify the splits of political subdivisions in the Final Plan or to demonstrate that no splits could be eliminated

75. The 2012 Final Plan contains multiple divisions among counties and municipalities that are not “absolutely necessary.”

76. At no time did the Commission demonstrate that the divisions contained in the 2012 Final Plan are absolutely necessary.

77. The Commission failed to demonstrate that the exclusion of a significant portion of Dauphin County from the City of Harrisburg, the Dauphin County seat, was absolutely necessary, and, in fact, it led to the unnecessary splits in Cumberland County.

78. The Commission failed to address, consider or adjust the 2012 Final Plan in accordance with requests of the public and generally failed to undergo the types of considerations mandated by the Pennsylvania Constitution concerning splits of political subdivisions. As reflected in the Costa Amendment and other submittals by witnesses before the Commission, such considerations were readily achievable. Thus,

numerous divisions among counties and municipalities contained in the 2012 Final Plan are not absolutely necessary and could have been eliminated.

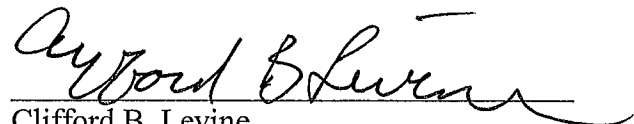
79. The Commission failed to follow the requirements imposed by *Holt v. LRC*.

Relief Requested

80. For the foregoing reasons, the Petitioners ask this Court to determine that the Final Plan is contrary to law under Section 17(d) of Article II of the Pennsylvania Constitution and to remand this matter to the Commission with direction to make the following revisions to the Final Plan or provide some other type of appropriate relief so that:

- a) A final plan will meet the requirements of the Pennsylvania Constitution and *Holt v. LRC*;
- b) A final plan will eliminate unnecessary splits of counties and municipalities;
- c) A process will be established to provide for the fair and impartial development of a Final Plan; and
- d) Other relief may be provided that is fair, equitable and just.

Respectfully submitted,



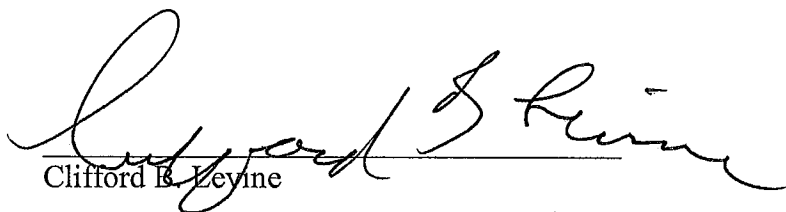
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PETITION FOR REVIEW was served this 6th day of July, 2012, by hand delivery, and electronic mail on the following:

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