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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JUL - 9 2012

Middle

DANIEL P. DOHERTY, CHERYL L.
NICHOLAS, STACY C. HANNAN, KRISTINE
L. KIPPHUT, SUSAN SABA, TARA
ANTHONY, PAULA BRENSINGER, and SETH
D. MCELROY

Petitioners,

v.

2011 LEGISLATIVE REAPPORTIONMENT COMMISSION OF THE COMMONWEALTH
OF PENNSYLVANIA,

Respondent.

No.

Misc. Docket

PETITION FOR REVIEW

IN THE NATURE OF AN APPEAL FROM THE 2012 REVISED FINAL
PLAN OF THE 2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION

Pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution, and
Pennsylvania Rules of Appellate Procedure 3321 and 1501 *et. al.*, Petitioners DANIEL P.
DOHERTY, CHERYL L. NICHOLAS, STACY C. HANNAN, KRISTINE L. KIPPHUT,
SUSAN SABA, TARA ANTHONY, PAULA BRENSINGER, SETH D. MCELROY
(collectively, "Petitioners"), as individual voters in the Commonwealth of Pennsylvania, through
undersigned counsel Frank A. Rothermel of Bernhardt, Rothermel & Siegel, file this Petition for

Review of the Revised Final 2012 Legislative Reapportionment Plan (the "Revised Final Plan") adopted by the 2011 Legislative Reapportionment Commission of the Commonwealth of Pennsylvania on the grounds that the Revised Final Plan unconstitutionally splits hundreds of political subdivisions of the Commonwealth-in violation of the express requirement of Section 16, Article 2 that *no* subdivisions be split "*unless absolutely necessary.*" In fact, the Revised Final Plan violates Section 16 on a state-wide basis by making 319 *more* subdivision splits for the House and 61 *more* subdivision splits for the Senate than the number of splits which are "absolutely necessary." The Plan thus deprives voters in the Commonwealth of their right to select their legislative representatives in the manner provided by the Constitution. In support of their request for relief, the Petitioners state as follows:

STATEMENT OF JURISDICTION

1. This Court has exclusive appellate jurisdiction over this Petition pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution and 42 Pa.C.S. §725(l). This Petition is addressed to the Court's appellate jurisdiction and is in the nature of a Petition for Review pursuant to Rule 3321 and Rule 1501 etc of the Pennsylvania Rules of Appellate Procedure.

PETITIONERS

2. Petitioner Daniel P. Doherty resides at 1150 Cross Street, Philadelphia, PA 19147, in the City of Philadelphia, the County of Philadelphia, Ward 1, Division 3. Mr. Doherty is a registered Independent voter and is aggrieved by the Revised Final Plan, and therefore has standing to serve as a petitioner. Under the Revised Final Plan, the City and County of Philadelphia would be divided into 26 House Districts, with House District Numbers 152, 172, 185, 191 and 194 unnecessarily crossing county lines, whereas the Petitioners'

Alternative Plan proves that the City and County of Philadelphia only needs to be divided into 24 House Districts with no city or county splits. Also, under the Revised Final Plan, the City and County of Philadelphia would be divided into 7 Senate Districts, with Senate District Numbers 4, 7 and 8 unnecessarily crossing county lines, whereas the Petitioners' Alternative Plan proves that the City and County of Philadelphia only needs to be divided into 6 Senate Districts with no city or county splits. Therefore, the LRC Final Revised Plan is in violation of Article 2, Section 16 of the Pennsylvania Constitution.

3. Petitioner Cheryl L. Nicholas resides at 1008 Shearwater Dr., Audubon, PA 19403, in the Township of Lower Providence, the County of Montgomery, Ward 3, Division 3. Ms. Nicholas is a registered Democratic voter and is aggrieved by the Revised Final Plan, and therefore has standing to serve as a petitioner. Under the Revised Final Plan, the County of Montgomery is divided into Senate Districts 4, 7, 12, 17, 24 and 44; whereas the Petitioners' Alternative Plan proves that the County of Montgomery only needs to be divided into four Senate Districts. Additionally, under the Revised Final Plan, the County of Montgomery is divided into 17 House Districts (26, 53, 61, 70, 131, 146, 147, 148, 149, 150, 151, 152, 153, 154, 157, 166 and 172) whereas the Petitioners' Alternative Plan proves that the County of Montgomery only needs to be divided into 15 House Districts. Moreover, her county of Montgomery contains 8 municipalities that are split (The Borough of Pottstown, the Township of Lower Gwynedd, the Township of Whitpain, the Township of Plymouth, the Township of Lower Merion, the Township of West Norriton, the Township of Upper Providence, the Township of Upper Dublin), whereas the Petitioners' Alternative Plan contains only 2 (The Township of Upper Gwynedd and the Township of Upper Dublin).

Therefore, the LRC Final Revised Plan is in violation of Article 2, Section 16 of the Pennsylvania Constitution.

4. Petitioner Stacy C. Hannan resides at 632 Hamilton Ct., Collegetown, PA 19426, in the Borough of Trappe, in the County of Montgomery. Ms. Hannan is a registered Republican voter and is aggrieved by the Revised Final Plan, and therefore has standing to serve as a petitioner. Under the Revised Final Plan, the County of Montgomery is divided into Senate Districts 4, 7, 12, 17, 24 and 44; whereas the Petitioners' Alternative Plan proves that the County of Montgomery only needs to be divided into four Senate Districts. Additionally, under the Revised Final Plan, the County of Montgomery is divided into 17 House Districts (26, 53, 61, 70, 131, 146, 147, 148, 149, 150, 151, 152, 153, 154, 157, 166 and 172) whereas the Petitioners' Alternative Plan proves that the County of Montgomery only needs to be divided into 15 House Districts. Moreover, the county of Montgomery contains 8 municipalities that are split (The Borough of Pottstown, the Township of Lower Gwynedd, the Township of Whitpain, the Township of Plymouth, the Township of Lower Merion, the Township of West Norriton, the Township of Upper Providence, the Township of Upper Dublin), whereas the Petitioners' Alternative Plan contains only 2 (The Township of Upper Gwynedd and the Township of Upper Dublin). Therefore, the LRC Final Revised Plan is in violation of Article 2, Section 16 of the Pennsylvania Constitution.

5. Petitioner Kristine L Kipphut resides at 8129 Cresco Avenue Apartment 2F, Philadelphia, PA 19136, in the City of Philadelphia, the County of Philadelphia, Ward 64, Division 2. Ms. Kipphut is a registered Republican voter and is aggrieved by the Revised Final

Plan, and therefore has standing to serve as a petitioner. Under the Revised Final Plan, the City and County of Philadelphia would be divided into 26 House Districts, with House District Numbers 152, 172, 185, 191, and 194 unnecessarily crossing county lines, whereas the Petitioners' Alternative Plan proves that the City and County of Philadelphia only needs to be divided into 24 House Districts with no city or county splits. Also, under the Revised Final Plan, the City and County of Philadelphia would be divided into 7 Senate Districts, with Senate District Numbers 4, 7, and 8 unnecessarily crossing county lines, whereas the Petitioners' Alternative Plan proves that the City and County of Philadelphia only needs to be divided into 6 Senate Districts with no city or county splits. In addition, under the LRC Final Revised Plan, Ms. Kipphut's 64th Ward is divided into House District Numbers 172 and 177, whereas the Petitioners' Alternative Plan proves that the 64th Ward can remain whole in one House district without any splits in District 172. Also, under the LRC Final Revised Plan, Ms. Kipphut's 64th Ward is divided into Senate District Numbers 2 and 5 whereas Petitioners' Alternative Plan proves that the 64th Ward can remain whole in one Senate district in District 5 without any splits. As neither the 172nd and 177th House Districts nor the 2nd and 5th Senate Districts are majority-minority districts under either the LRC Revised Final Plan or the Petitioners' Alternative Plan there is no overriding Voting Rights Act consideration to require the splits. Therefore, the LRC Final Revised Plan is in violation of Article 2, Section 16 of the Pennsylvania Constitution.

6. Petitioner Susan Saba resides at 35 Tanglebrook Drive, Holland, PA 18966, in the Township of Northampton, the County of Bucks, District 9. Ms. Saba is a registered Democratic voter and is aggrieved by the Revised Final Plan, and therefore has standing to serve

as petitioner. Under the Revised Final Plan, the County of Bucks would be divided into 4 Senate Districts, with Senate District numbers 6, 10, 12, and 24, with 2 districts crossing county lines, whereas the Petitioners' Alternative Plan proves that the County of Bucks only needs to be divided into 3 Senate Districts with only 1 district crossing county lines. Additionally, the Senate District that Ms. Saba would reside in under the Petitioners' Alternative Plan is more compact than in the LRC Final Revised Plan. Therefore, the LRC Final Revised Plan is in violation of Article 2, Section 16 of the Pennsylvania Constitution.

7. Petitioner Tara Anthony resides at 2037 West Liberty Street, Allentown, PA 18104, in the City of Allentown, County of Lehigh, Ward 11, Division 5. Ms. Anthony is a registered Democratic voter and is aggrieved by the Revised Final Plan, and therefore has standing to serve as a petitioner. Under the Revised Final Plan, her 11th Ward in the City of Allentown is split between two House Districts, the 22nd and the 132nd, whereas the Petitioners' Alternative Plan proves that the 11th Ward does not need to be split as it is contained entirely in the 132nd district. In both the Revised Final Plan, and the Petitioners Alternative Plan, the 22nd District is created as a "minority coalition" district and therefore there is no overriding Voting Rights Act requirement for the split. In addition, under the LRC Revised Final Plan, Ms. Anthony's County of Lehigh contains 4 municipal splits (the City of Allentown, the City of Bethlehem, the Township of Salisbury, and the Township of South Whitehall) whereas the Petitioners' Alternative Plan only contains 2 municipal splits (the City of Allentown and the City of Bethlehem), both of which are required due to the size of the municipalities. Therefore, the LRC Final Revised Plan is in violation of Article 2, Section 16 of the Pennsylvania Constitution.

8. Petitioner Paula M Brensinger resides at 427 Chestnut Street Rear, in the Borough of Emmaus, the County of Lehigh, District 2. Ms. Brensinger is a registered Democratic voter of the Commonwealth of Pennsylvania and is aggrieved by the Revised Final Plan and therefore has standing to serve as a petitioner. Under the Revised Final Plan, the 131st Legislative District, in which Ms. Brensinger would reside, would be divided into a district that would span over Lehigh, Northampton, and Montgomery Counties. The Petitioners' Alternative Plan keeps the Borough of Emmaus in the 134th Legislative District and proves that it can remain in a district that only splits counties once, and thus the LRC Revised Final Plan is in violation of Section 16 of Article 2 of the Pennsylvania Constitution. In addition, under the LRC Revised Final Plan, Ms. Brensinger's County of Lehigh contains 4 municipal splits (the City of Allentown, the City of Bethlehem, the Township of Salisbury, and the Township of South Whitehall) whereas the Petitioners' Alternative Plan only contains 2 municipal splits (the City of Allentown and the City of Bethlehem), both of which are required due to the size of the municipalities.

9. Petitioner Seth D, McElroy, resides at 411 Derrick Avenue, Uniontown, PA 15401, in the Township of South Union, County of Fayette, District 2. Mr. McElroy is a registered Democratic voter of the Commonwealth of Pennsylvania and is aggrieved by the Revised Final Plan and therefore has standing to serve as a petitioner. Under the Revised Final Plan, the 32nd Senatorial District, in which Mr. McElroy would reside, would be divided into a district that would span over Fayette, Somerset, and Westmoreland counties while the Petitioners' Alternative Plan keeps the 32nd Senatorial Districts only in Fayette and Westmoreland Counties, and proves it can remain in a district that only splits counties once,

and thus the LRC Revised Plan is in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

10. Petitioners, as registered voters in the Commonwealth of Pennsylvania and aggrieved persons, have standing to seek this Court's review of the entire Revised Final Plan. *See* Pennsylvania Const., Art. 2., § 17(d); *Albert v. 2001 Legislative Reapportionment Com 'n*, 567 Pa. 670, 679 (2002).

RESPONDENT

11. Respondent, the 2011 Legislative Reapportionment Commission of the Commonwealth of Pennsylvania (the "Commission"), was established pursuant to Sections 17(a) and (b) of Article 2 of the Pennsylvania Constitution, and is charged with the responsibility for preparing preliminary and final reapportionment plans in accordance with Section 17(c) of such article. Respondent's address is North Office Building, Room 104, Harrisburg, Pennsylvania 17120.

CONTROLLING CONSTITUTIONAL PROVISIONS

12. Section 16 of Article 2 of the Pennsylvania Constitution ("Section 16") states in relevant part:

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 ... Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

Section 17 of Article 2 of the Pennsylvania Constitution ("Section 17") states in relevant part:

If a preliminary, revised or final reapportionment plan is not filed by the commission within the time prescribed by this section, unless the time be extended by the

Supreme Court for cause shown, the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth.

DETERMINATION SOUGHT TO BE REVIEWED

13. Petitioners seek review of the Revised Final Plan, adopted on June 8, 2012. True and correct copies of the Revised Final Plan for the Pennsylvania Senate and House of Representatives are attached as Exhibits A and B, respectively.

14. Pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution, this Court must review the Revised Final Plan to determine whether it is "contrary to law."

15. Moreover, Petitioners seek determination if the Legislative Reapportionment Commission violated this Court's January 25, 2012 order by failing to submit a proper, legal plan in adherence with the Pennsylvania Constitution upon remand and therefore a final reapportionment plan was, effectively, "not filed by the Commission within the time prescribed by this section". (Article 2, Section 17 (g)).

PROCEDURAL BACKGROUND

16. The Commission adopted a Preliminary Reapportionment Plan at an administrative meeting held on October 31, 2011 (the "Preliminary Plan").

17. The Commission conducted public hearings on September 7, 2011, September 14, 2011, November 18, 2011, and November 23, 2011. The Commission held public administrative meetings on October 31, 2011, December 7, 2011, and December 12, 2011, at which it adopted the Final Plan.

18. On review of this Final Plan, this Court found that this Final Plan was contrary to law (Holt vs. 2011 LRC, 38 A. 3d 711 (Pa, 2012)), and issued a Per Curium order remanding the plan back to the Legislative Reapportionment Commission.

Specifically, the Court says as follows:

AND NOW, this 25th day of January, 2012, upon consideration of the petitions for review and briefs in these legislative redistricting appeals, and after entertaining oral argument on January 23, 2012, this Court finds that the final 2011 Legislative Reapportionment Plan is contrary to law. PA. CONST. art. II, § 17(d).¹ Accordingly, the final 2011 Legislative Reapportionment Plan is **REMANDED** to the 2011 Legislative Reapportionment Commission with a directive to reapportion the Commonwealth in a manner consistent with this Court's Opinion, which will follow.

19. Moreover, in the Court's Opinion, the Court says as follows:

We trust that our recalibration of the emphasis respecting population equality to afford greater flexibility in reapportioning legislative districts by population should create sufficient latitude that the 2011 LRC, and future such bodies, may avoid many of the complaints that citizens have raised over the years, particularly respecting compactness and divisions of political subdivisions.

20. The Commission conducted public hearings or public administrative hearings on February 22, 2012, February 28, 2012, April 12, 2012, May 2, 2012, May 7, 2012, and June 1, 2012. The Commission held a public administrative hearing on June 8, 2012 to adopt this final revised plan. It should be noted that Petitioners believed that after this Court's January 25, 2012 order and the testimony of others, that the Commission would adopt a plan that was not contrary to law, despite that the Revised Preliminary Plan appeared to be contrary to law. However, there was no public comment allowed at this

hearing, and therefore Petitioners were not afforded an opportunity to comment before this Revised Final Plan was voted on.

GENERAL STATEMENT OF OBJECTIONS TO THE DETERMINATION

21. The Revised Final Plan is contrary to law and either must be remanded pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution, because it violates Section 16 of Article 2, or in the alternative, the Court must declare this plan as in violation of the January 25, 2012 order to create a plan in adherence with the Constitution and therefore reapportion the Commonwealth on its own. Section 16 provides in pertinent part:

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 ... Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

22. The prohibition on splitting subdivisions "unless absolutely necessary" is unambiguous and must be enforced in accordance with its plain and ordinary meaning. *Jubelirer v. Rendell*, 598 Pa. 16, 39 (Pa. 2008). While there is no need to look behind the plain language of this prohibition, the reasons for the prohibition are self-evident. As the record before the Commission reflects, the proliferation of unnecessary subdivision splits undermines the ability of the voters in a subdivision to secure meaningful and effective legislative representation with respect to the interest and concerns of importance to that subdivision.

23. Despite the unmistakably clear language and purpose of Section 16, the Revised Final Plan violates that section on a pervasive, state-wide basis. Rather than

splitting subdivisions only when "absolutely necessary," the Revised Final Plan needlessly creates hundreds of divided counties, cities, incorporated towns, boroughs, townships and wards. These splits are not "absolutely necessary," or even marginally necessary, to achieve any constitutionally valid objective of the Commission.

24. The Revised Final Plan also violates Section 16 on a state-wide basis by failing to offer any "specific explanation for why the constitutional prerequisites of compactness and respect for political subdivisions cannot be accommodated simultaneous with the maintenance of substantial equality of population and enforcement of voting interests of protected groups in the manner prescribed by federal law." *Albert v. 2001 Legislative Reapportionment Com 'n*, 567 Pa. 670, 688 (2002) (Saylor, 1., concurring; joined by Castille, 1., and Eakin, 1.).

The Revised Final Plan Violates Section 16(b) 's Prohibition on Dividing Political Subdivisions "Unless Absolutely Necessary"

25. This Court's precedent, including *Albert v. 2001 Legislative Reapportionment Com 'n*, 567 Pa. 670 (2002), make clear that compliance with Section 16 requires a balance between "the overriding objective of substantial equality in population among districts," "concerns for compactness and adherence to a political subdivision line," and compliance with federal voting requirements. *Id.*, 567 Pa. at 677. Determining whether a plan complies with the Section 16 and federal requirements requires analysis of the plan "as a whole." *Id.* at 685.

26. The following table, generated using the data attached hereto at Exhibit L and Exhibit F, shows a comparison between the total number of subdivision splits and split subdivisions under the Revised Final Plan, and the total number of subdivision splits and split

subdivisions that would have resulted if the Commission had prepared a plan in strict compliance with the requirements of Section 16 while maintaining or exceeding the same level of population equality. As discussed in Appendix A, we exclude municipalities whose splits are agreed to by both the LRC and Petitioners as being “absolutely necessary” due to the size of the municipalities, which in the House Plan would be the Cities of Philadelphia, Pittsburgh, Scranton, Erie, Allentown, Bethlehem, and Reading and the Township of Upper Darby, and in the Senate plan, would be the Cities of Philadelphia and Pittsburgh.

HOUSE LRC PLAN

County Splits	Municipal Splits	Ward Splits
92	135	197
Total Splits: 424		

HOUSE PETITIONERS ALTERNATIVE PLAN

County Splits	Municipal Splits	Ward Splits
67	13	25
Total Splits: 105		

SENATE LRC PLAN

County Splits	Municipal Splits	Ward Splits
69	0	52
Total Splits: 121		

SENATE PETITIONERS ALTERNATIVE PLAN

County Splits	Municipal Splits	Ward Splits
52	0	8
Total Splits: 60		

27. To analyze the Revised Final Plan as a whole, Petitioners compared that plan to a state-wide plan designed exclusively to satisfy the objectives of Section 16 and federal law (the "Petitioners' Alternative Plan"), without regard to any objectives that fall outside the scope of those constitutional requirements, such as enhancement of partisan voting power in a particular district. While we cannot anticipate what petitions will be filed in front of this Court, we do note in Appendix B that while we do not cause a municipal split in any House or Senate district to

accommodate the residence of an incumbent, Petitioners' Alternative Plan not only splits fewer municipalities in the House as the previously filed Holt Petition (7 MM 2012), but also preserves the districts of all incumbents that are seeking reelection and were in office as of 2010 with the exception of three, while the plan in the Holt Petition displaces 39 of these incumbents. The Petitioners' Alternative Plan was created through a very thorough analysis of all the factors that ought to go into creating such a plan. Petitioners discuss the overriding "ground rules" used to set the framework of this plan in Appendix A, and a discussion of why each district was drawn the way it was in Appendix B.

28. Comparison of the Petitioners' Alternative Plan to the Revised Final Plan illustrates the extent to which - *on a state-wide basis* - the Revised Final Plan falls short of Section 16's express requirement to preserve subdivision boundaries. Indeed, the Revised Final Plan creates *hundreds* of subdivision splits that are not "absolutely necessary" to meet any objective based on the Pennsylvania Constitution or federal law. The Revised Final Plan unnecessarily splits many of these subdivisions multiple times. As a result, the total number of unnecessary subdivision *splits* under the Revised Final Plan is greater than the total number of *subdivisions* affected by those unnecessary splits. Specifically, as set forth in the spreadsheets attached as Exhibit F:

a. The Revised Final Plan for the House created a total of 319 splits more than the number of subdivision splits which were "absolutely necessary" under Section 16.

b. The Revised Final Plan for the Senate created a total 61 splits more than the number of subdivision splits that were "absolutely necessary" under Section 16.

29. The hundreds of additional splits called for by the Revised Final Plan cannot be explained by any constitutionally valid objective under Section 16.

30. The additional splits under the Revised Final Plan also cannot be justified by Voting Rights Act considerations, as discussed further in Appendix B.

31. The divisions under the Revised Final Plan cannot be justified by compactness or contiguousness. For the Senate, the compactness or contiguousness of the Revised Final Plan are no greater than, and are arguably less than, that of the Petitioners' Alternative Plan. For the House, the Revised Final Plan creates several non-contiguous districts for the House, while the Petitioners' Alternative Plan creates none.

32. Additionally, the divisions under the Revised Final Plan cannot be justified by attempting to create districts with a closer population deviation to the ideal statistical mean that is derived by dividing the 2010 Census Population of the Commonwealth of 12,702,379 by 203 for the House and 50 for the Senate, which would cause a number of 62,573 for the House and 254,048 for the Senate. As discussed in Appendix A, the Petitioners' Alternative Plan creates more districts in both the House and Senate that have population totals closer to this mean than the Revised Final Plan.

33. The Commission's apparent desire to limit the number of changes to the voting districts established in 2001 also cannot justify its violation of Section 16's mandate to preserve political subdivisions. As this Court noted in *Albert*, the "continuation of the pre-existing legislative districts" should not be a significant factor in evaluating a reapportionment plan. 567 Pa. at 686-687. Under Section 17(a) of Article 2, the Commission is created for the

express purpose of "*reapportioning the Commonwealth*," not for the purpose of preserving existing districts or accommodating the residence of incumbents.

34. The excessive number of subdivision splits also cannot be justified on the theory that the total numbers of splits are in line with the total numbers of splits under the 2001 reapportionment plan that this Court approved in *Albert*. The *Albert* decision made clear that it had *not* been presented with a meaningful challenge to the Commission's plan "as a whole." In fact, no prior decision of this Court compares a plan proposed by the Commission to a state-wide plan developed solely on the basis of Section 16 considerations.

35. There are many individual examples of unnecessary subdivision splits in the Revised Final Plan which confirm that the Commission failed to follow the clear dictates of Section 16. For example, the Revised Final Plan for the House split numerous subdivisions whose populations were *smaller* than the ideal House district population and therefore should not have been split at all, because no valid countervailing considerations necessitated a split. As discussed in Appendix A, The LRC Revised House Final Plan splits 60 municipalities in excess of the 8 required to be split due to its population exceeding the upper range of an acceptable deviation from the ideal statistical mean. Petitioners' Alternative plan only splits 6 of these municipalities, and also had more districts with populations closer to the ideal of 62,573 than the LRC. For those splits, a detailed analysis is demonstrated on why these municipalities had to be split in Appendix B, and a breakdown and analysis of the populations in each district are in Appendix A and Exhibit J. In the Senate, while the LRC and Petitioners are in agreement on the number of municipalities that needed to be split, the LRC made an additional 17 county splits and 64 ward splits in excess of what was "absolutely necessary". In addition, the LRC

created a population deviation almost twice that of the Petitioners' Alternative Plan and also failed to achieve districts with populations closer to the ideal of 254,048 in 42 of the 50 Senate Districts than the Petitioners' Alternative Plan. (see, Appendix A, B, and Exhibit F).

36. For all the reasons discussed above, analysis of the Revised Final Plan *as a whole* establishes that the Commission acted contrary to law by creating hundreds of subdivision splits that are not "absolutely necessary."

The Commission Acted Contrary to Law by Failing to Offer any "Specific Explanation" for the Excessive Number of Subdivision Splits under its Plan

37. The concurring opinion in *Albert* expressed the view that, where a reapportionment plan creates a large number of subdivision splits that cannot be explained by the requirements of Section 16 or federal voting requirements, the Commission should explain itself. In particular, it should offer-

some specific explanation for why the constitutional prerequisites of compactness and respect for political subdivisions cannot be accommodated simultaneous with the maintenance of substantial equality of population and enforcement of voting interests of protected groups in the manner prescribed by federal law.

Id., 567 Pa. at 688 (Saylor, 1., concurring; joined by Castille, 1., and Eakin, 1.) (italics added).

38. Here, the Commission has failed to offer and cannot offer *any* explanation, much less a "specific explanation," that would satisfy the straightforward requirement proposed by the *Albert* concurrence. No such explanation can be provided because the Petitioners' Alternative Plan demonstrates, for the reasons discussed above, that "the

constitutional prerequisites of compactness and respect for political subdivisions" *can* "be accommodated simultaneous with the maintenance of substantial equality of population and enforcement of voting interests of protected groups in the manner prescribed by federal law." Moreover, the Petitioners' Alternative Plan provides a detailed explanation as to why each split is "absolutely necessary" in Appendix B, while the LRC Revised Final Plan failed to do this.

39. The Commission's inability to provide the "specific explanation" called for by the *Albert* concurrence by itself requires remand in this case. As discussed in paragraphs 33 through 37 above, the Revised Final Plan is replete with examples of subdivision splits that serve no constitutionally valid purpose and therefore are contrary to Section 16's prohibition on splits that are not "absolutely necessary."

40. Under these circumstances, where concrete and objective data demonstrate that the objectives of Section 16 and federal voting requirements are simultaneously achievable on a state-wide basis, yet the Commission flouts the "*constitutional prerequisites of compactness and respect for political subdivisions*" and offers no "specific explanation" for its failure to honor those prerequisites, the Commission plainly has acted contrary to law.

ADDITIONAL SUPPORT FOR RELIEF SOUGHT

41. While the Constitution in Article 2, Section 17(d) calls for a remand upon this Court declaring a Final Plan contrary to law, it has become apparent that the Commission has, and

intends to continue to, ignore this Court's directive to create a Plan in accordance with the Pennsylvania Constitution.

42. According to Commission member Senator Pileggi, in his comments during the June 8, 2012 public administrative hearing. "This Senate map responds to the Supreme Court's Majority Opinion of February 3, 2012 -- which rejected past precedent and set forth new rules for the Commission's work"

43. Moreover, according to Commission member Representative Turzai, in his comments during the June 8, 2012 public administrative hearing. "I am convinced that there are those of us in the populous that thrive on chaos and disorganization and have nothing to do with the contiguity of good government.... Wards are a political creation, why they have Constitutional protection I'm not quite sure. But wards are a political creation, but we do have reduced split ward, and we do have terms that are absolutely new and to the parlance, and I think are not appropriate terms, but there are reduced total municipal splits and total ward splits, since they seem to be taken into account with the new guidelines by the Court.... The 2011 Final Plan was constitutionally sound based on 40 years of Pennsylvania Supreme Court precedent... Let there be no confusion, the 2011 Final Plan, which was the work product of this Commission was Constitution (sic) based on 40 years of case law which existed prior to the Court's search for a new standard in *Holt*. But the rules seemed to have changed... We cannot change, I do believe, the rules in the middle of the game."

44. It has therefore become clear, that if the Court were to remand this back to the Commission, the result could be the same, since members of the Commission have indicated that they are unwilling to embrace the Court's directive to create plan in accordance with the law.

This would result in the potential eternal loop of the creation of illegal Revised Plans and remanding of the plans for revisions based on the correct standards that this Court has applied. Therefore, as an alternative to the remand, we as Petitioners are offering our plan, which as we have shown is in accordance with the Constitution, to be enacted into law based on the belief that since the Commission violated this Court's order by creating a Revised Plan that was also contrary to law, that the Court ought to stop this cycle by enacting our plan, which is in adherence to the Constitution. We do not petition this Court with the anticipation or expectation that this Court will want to adopt our plan. We understand that if the Court would to take this step that it would be extraordinary, which is why Petitioners provided the comprehensive detailed mechanics of how and why each district was drawn in Appendix B.

RELIEF SOUGHT

WHEREFORE, petitioner prays the Court:

1. Determine that the Revised Final Plan is contrary to law under Section 17(d) of Article 2 of the Pennsylvania Constitution; Remand the Final Plan to the Commission and direct the Commission, pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution, to (a) reapportion the legislative districts of the Commonwealth in a manner that avoids any subdivision split that is not absolutely necessary; and (b) to provide a specific explanation of any continued deviation from the requirements of Section 16 of Article 2 of the Pennsylvania Constitution

OR, in the ALTERNATIVE

2. Determine that the Revised Final Plan is contrary to law under Section 17(d) of Article 2 of the Pennsylvania Constitution and declare that the Commission is in

violation of the Court's January 25, 2012 per curium order to create a plan that was in adherence to the Pennsylvania Constitution, and declare that as such, the LRC failed to file a valid plan in accordance with Section 17(g), Article 2, of the Pennsylvania Constitution; and then declare that the Petitioners' Alternative Plan, as legally described in Exhibit M, is in adherence with the Pennsylvania Constitution, and Either direct the Commission to adopt Petitioners' plan upon remand or use Petitioners' plan to apportion the Commonwealth, in accordance with Section 17(g), Article 2.

Respectfully submitted,

Dated: July 9, 2012

BY:



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