

Supreme Court of Pennsylvania

Nos. 126 MM 2012, 127 MM 2012, 128 MM 2012,
129 MM 2012, 130 MM 2012, 131 MM 2012,
132 MM 2012, 133 MM 2012, 134 MM 2012, 39 WM 2012,
40 WM 2012, 41 WM 2012, 42 WM 2012

**IN RE: PETITIONS FOR REVIEW CHALLENGING THE FINAL
2012 LEGISLATIVE REAPPORTIONMENT PLAN**

***AMICUS CURIAE* BRIEF OF SENATOR DOMINIC PILEGGI AND APPENDIX**

**Response to Petitions for Review Challenging the Final Reapportionment Plan of the 2011
Legislative Reapportionment Commission Dated June 8, 2012. Proceedings on Remand
from this Court's January 25, 2012, Order Rejecting the 2011 Final Reapportionment Plan
and Remanding for Further Proceedings.**

BLANK ROME LLP

Brian S. Paszamant
PA Bar Id. No. 78410
Mary Ann Mullaney
PA Bar Id. No. 60503
One Logan Square
130 N. 18th Street
Philadelphia, PA 19103
Tel.: (215) 569-5500
Fax: (215) 569-5555

DLA PIPER LLP (US)

Carl M. Buchholz
PA Bar Id. No. 65567
Brian M. Robinson
PA Bar Id. No. 204364
One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, PA 19103
Tel.: (215) 656-3300
Fax: (215) 656-3301

Attorneys for *Amicus Curiae*, Senator Dominic Pileggi

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF INTEREST OF SENATOR DOMINIC PILEGGI AS AMICUS CURIAE.....	1
BACKGROUND	1
A. The Process Followed by the LRC in the Wake of the <i>Holt</i> Decision Was Fair, Reasonable and Appropriate.	2
B. In Accord with the Directive Issued by this Court in <i>Holt</i> , the LRC Has Approved a Plan That, with Regard to Certain Key Measures, Is a Significant Improvement Over Its 2011 Plan	3
1. The 2012 Plan Maintains Substantial Equality of Population Among Senate Districts	6
2. The 2012 Plan Decreases the Number of Divisions Among Counties, Municipalities and Wards in the Senate Districts	6
3. The 2012 Plan Consists of More Tightly Compact and Contiguous Senate Districts	11
ARGUMENT.....	13
A. The 2012 Plan Is Not Contrary to Law and the Challengers Cannot Meet Their Burden to Demonstrate Otherwise.....	13
B. To the Extent Discretion Is To Be Exercised in the Redistricting Process, It Is To Be Exercised by the LRC.....	14
C. The LRC Is <i>Not</i> Constitutionally Compelled to Adopt the Plan that “Best” Minimizes Population Deviation and the Splitting of Political Subdivisions While “Best” Maximizing Compactness and Contiguity	17
CONCLUSION.....	21
CERTIFICATE OF SERVICE	
APPENDIX	
1. Excerpt from transcript of January 23, 2012, proceedings in <i>Holt v. 2011 Legislative Reapportionment Comm’n</i>	
2. Chart identifying Retrospective Retained Constituency Among Senate Districts	

TABLE OF AUTHORITIES

	<u>Page</u>
CASES	
<i>Abrams v. Johnson</i> , 521 U.S. 74 (1997).....	4
<i>Albert v. 2001 Legislative Reapportionment Comm’n</i> , 790 A.2d 989 (Pa. 2002).....	13
<i>Bush v. Vera</i> , 517 U.S. 952 (1996).....	14
<i>Commonwealth ex rel. Specter v. Levin</i> , 293 A.2d 15 (Pa. 1972).....	10, 11, 13
<i>Gaffney v. Cummings</i> , 412 U.S. 735 (1973).....	3, 13, 14
<i>Holt v. 2011 Legislative Reapportionment Comm’n</i> , 38 A.3d 716 (Pa. 2012).....	<i>passim</i>
<i>Karcher v. Daggett</i> , 462 U.S. 725 (1983).....	4
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995).....	4
<i>In re Pennsylvania Legislative Reapportionment Commission (In re 1991 Reapportionment)</i> , 609 A.2d 132 (Pa. 1992).....	4, 10
<i>In re Reapportionment Plan for the Pennsylvania General Assembly (1981 Reapportionment)</i> , 442 A.2d 661 (Pa. 1981).....	13, 15, 16
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	15
STATUTE	
Voting Rights Act, 42 U.S.C. § 1971 <i>et seq.</i>	3, 17
SECONDARY SOURCES	
K. Gormley, <i>Racial Mind-Games and Reapportionment</i> , 4 U. Pa. J. Const. L. 735 (2002)	5

National Conference of State Legislatures, *Redistricting Law 2010* (2009)19

Pildes & Niemi, *Expressive Harms, “Bizarre Districts,” and Voting Rights:
Evaluating Election-District Appearances after Shaw v. Reno*,
92 Mich. L. Rev. 483 (1993)15

Senator Dominic Pileggi respectfully submits this brief as *amicus curiae*, pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure, in support of Respondent, the Commonwealth of Pennsylvania’s 2011 Legislative Reapportionment Commission (“LRC”). He so submits to respectfully request that this Court dismiss Petitioners’ appeals from the LRC’s Final 2012 Legislative Reapportionment Plan (“2012 Plan”); determine that the 2012 Plan is in full compliance with all applicable constitutional and statutory requirements; and mandate that the 2012 Plan shall have the force of law and shall be used in all forthcoming elections to the General Assembly until the next constitutionally mandated reapportionment shall be approved.

**STATEMENT OF INTEREST OF
SENATOR DOMINIC PILEGGI AS AMICUS CURIAE**

Senator Dominic Pileggi is a citizen of and registered voter in the Commonwealth of Pennsylvania. He is also a Pennsylvania State Senator, the Majority Leader for the State Senate, and one of the five members of the LRC. Senator Pileggi voted in favor of the 2012 Plan.

BACKGROUND

Pursuant to Section 17(a) of Article II of the Pennsylvania Constitution, in 2011, the LRC was constituted for the purpose of redistricting Pennsylvania on the basis of the federal decennial census of 2010. On December 12, 2011, the LRC adopted its Final Reapportionment Plan for the Commonwealth (the “2011 Plan”). Twelve appeals were filed, challenging that plan as contrary to law. In a per curiam Order dated January 25, 2012, this Court remanded the 2011 Plan to the LRC “with a directive to reapportion the Commonwealth in a manner consistent with this Court’s opinion, which will follow.” This Court entered that Opinion on February 3, 2012. *Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 716 (Pa. 2012).

A. The Process Followed by the LRC in the Wake of the *Holt* Decision Was Fair, Reasonable and Appropriate.

Following the remand of the 2011 Plan, the LRC abided by the Court's directive in *Holt*. Following that decision, under the leadership of the LRC Chairman, the Honorable Stephen J. McEwen, Jr., the LRC immediately engaged in a fair, reasonable, and appropriate process to create a new plan that would be consistent with the Court's directive in *Holt*. The LRC's work in this regard was done in full compliance with the Sunshine Act.

On February 22, 2012, less than three weeks after the *Holt* decision, Judge McEwen convened the LRC's first public meeting to discuss the status of new proposed preliminary redistricting plans. Mindful of the urgency of the matter, the LRC moved quickly and on April 12, 2012, the LRC adopted a preliminary redistricting plan which was then filed with the Secretary of the Commonwealth. Thereafter followed the thirty-day period permitted under the Commonwealth's Constitution for the filing of exceptions by any person aggrieved by the preliminary plan.

On May 2, 2012, and May 7, 2012, the LRC held public hearings on its preliminary plan. In response to the public comments that it received, the LRC redrew numerous Senate Districts,¹ including but not limited to:

- Redrawing Senate District 15 to include the City of Harrisburg;
- Unifying the North Hills of Allegheny County in a single district;
- Reducing the number of splits in Butler, Montgomery and Westmoreland Counties; and
- Including Cranberry Township, Butler County, in Senate District 21.

¹ This brief's predominant focus is on the Senate districts of the 2012 Plan, not the representative districts. In this *amicus curiae* filing, Senator Pileggi primarily highlights those issues that concern the Senate map of the 2012 Plan, not that of the House.

On June 8, 2012, following the period for public comment on the preliminary plan, the LRC voted on and adopted a final redistricting plan, the 2012 Plan, which was then filed with the Secretary of the Commonwealth. For any person aggrieved by a final plan of the LRC, the Constitution imposes no requirement that the final plan be submitted, in whole or in part, for public comment and permits the filing of no exceptions to that plan with the LRC. Instead, the Commonwealth's Constitution provides that the remedy is limited to the following: "Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof." Section 17(d), Art. II, Pa. Constitution. Pending in this Court as the instant matters are those appeals from the 2012 Plan.

Any and all arguments that the process outlined above was unfair, or otherwise flawed, must fail. Indeed, as Chairman of the LRC, Judge McEwen went to considerable lengths to ensure that, from the time of the remand of the 2011 Plan to that of the filing of the 2012 Plan, all Commissioners and members of the public were treated fairly.

B. In Accord with the Directive Issued by this Court in *Holt*, the LRC Has Approved a Plan That, with Regard to Certain Key Measures, Is a Significant Improvement Over Its 2011 Plan.

As a general matter, when the LRC undertook the process of redistricting the Commonwealth, a number of factors came into play. Included among them were population density, the borders of political subdivisions, and geography, as the LRC committed itself to demarcating districts that, as required by the Commonwealth's Constitution, reflected substantial equality of population, respect for the integrity of political subdivisions, and compact and contiguous territory.

Other considerations also influenced the LRC during the course of this process. When determining district lines, the LRC strove to address majority-minority districts in accordance

with the federal Voting Rights Act, 42 U.S.C. § 1971 *et seq.*; respect historic communities of interest, such as county seats; and preserve the cores of existing legislative districts, so that Pennsylvania’s citizens would be afforded continuity of representation by their elected officials.

Each is a traditional redistricting principle long recognized as legitimate by the United States Supreme Court. *See, e.g., Gaffney v. Cummings*, 412 U.S. 735, 749 (1973) (in addition to substantial equality of population among districts, “[t]here are other relevant factors to be taken into account and other important interests that States may legitimately be mindful of.”); *Miller v. Johnson*, 515 U.S. 900, 917 (1995) (traditional race-neutral districting principles include, among others, “communities defined by actual shared interests”); *Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (legitimate redistricting considerations include, among others, “preserving the cores of prior districts, and avoiding contests between incumbents”); *Abrams v. Johnson*, 521 U.S. 74 (1997).

In like fashion, this Court has acknowledged as appropriate and legitimate the LRC’s consideration of various traditional redistricting principles when redrawing the lines of the Commonwealth’s legislative districts. *See, e.g., Holt*, 38 A.3d at 758 (“[W]e trust that the LRC, in formulating its new plan, . . . will be attentive to the concerns of historically unified subdivisions, such as County seats.” (Emphasis added));² *id.* at 738 n.25 (“Other mandates . . . important to the LRC’s task[] are the *Fifteenth Amendment* [to the United States Constitution] and the Voting Rights Act of 1965.”); *In re Pennsylvania Legislative Reapportionment Commission (In re 1991 Reapportionment)*, 609 A.2d 132, 140 (Pa. 1992) (“The party leaders of both houses of the General Assembly *adequately represent the interests of incumbents and it is*

² During the January 23, 2012, oral argument regarding the 2011 Plan in *Holt*, this Court specifically inquired as to the role the preservation of communities of interest and county seats played in the determinations reflected in the 2011 Plan. *See, e.g., 1/23/2012 Holt tr.* at 99:22-23; 100:18-20 (attached to this brief as the first item in the Appendix).

within their sole discretion as members of the Legislative Reapportionment Commission to consider those interests when renumbering and redrawing the legislative districts.” (Emphasis added.)).

Indeed, throughout the *Holt* decision, this Court quoted extensively from Dean Ken Gormley, including his writings describing redistricting bodies’ consideration and application of various traditional redistricting principles:

“Historically, reapportionment bodies have considered ‘communities of interest’ as one legitimate factor in drawing fair and politically sensitive districts. . . . Redistricting bodies traditionally take into account a host of intangible communities, seeking to give them, where practicable, a voice in the government without unduly fracturing that voice. Thus, school districts, religious communities, ethnic communities, geographic communities which share common bonds due to locations of rivers, mountains and highways, and a host of other ‘communities of interest’ are routinely considered by districting bodies in order to construct fair and effective maps.

. . . .
[S]tates have historically considered a broad range of such imprecise communities of interest (many of which are naturally intertwined) *in exercising their sound discretion*. They do so to satisfy constituents. They do so to sweep together a host of generally identifiable interest groups that wish to be given a unified voice. This is perfectly healthy and permissible. It is an important aspect of the state’s prerogative, when it comes to structuring its own form of government.”

38 A.3d at 746 (quoting K. Gormley, *Racial Mind-Games and Reapportionment*, 4 U. Pa. J. Const. L. 735, 779-81 (2002) (emphasis added)).

In the wake of the *Holt* decision, not only did the LRC recommit itself to the Constitutional requirements and traditional redistricting principles, but it also specifically set out to remedy those aspects of the 2011 Plan that this Court had identified as rendering it contrary to law. As a result, when compared to the 2011 Plan, the 2012 Plan represents a marked improvement in certain key areas. Following *Holt*, the LRC endeavored to give greater respect to the integrity of political subdivision and to create districts that were significantly more

compact. It succeeded on both counts. The 2012 Plan dramatically reduces the number of political subdivision splits and provides for greater compactness among districts.

1. The 2012 Plan Maintains Substantial Equality of Population Among Senate Districts.

The 2010 census data revealed 254,048 to be the ideal population among the 50 Senate Districts for the Commonwealth. The 2011 Plan had a population deviation of 3.89% for the Senate. As it was below 10%, this variance did not unconstitutionally dilute the principle of substantial equality of population. But in *Holt*, this Court advanced its concerns regarding, among other things, the constitutional mandates of respect for political subdivision boundaries and of compactness and contiguity of legislative districts. As a necessary and expected consequence of addressing those concerns, the LRC afforded less weight to the goal of substantially equal population and an increase in the range of deviation resulted. In the 2012 Plan, the population deviation for the Senate is 7.96%. But because the LRC maintained this figure at a level below 10%, the imperative to achieve substantial equality of population in the redistricting process was not unconstitutionally compromised.

2. The 2012 Plan Decreases the Number of Divisions Among Counties, Municipalities and Wards in the Senate Districts.

Given the uneven population of the Commonwealth's 67 counties, 2,563 municipalities, and 4,462 wards, a redistricting plan must necessarily divide some political subdivisions. There are splits that are simply mathematically necessary, given that the population of a political subdivision may exceed the ideal population of a legislative district. Additionally, because of the various interests to be served and balanced in the redistricting process, divisions beyond those that are mathematically required can and do occur in any redistricting plan.

In light of these considerations, the splits of counties, municipalities and wards in the 2012 Plan are not excessive. Indeed, as compared with the 2011 Plan, the 2012 Plan significantly *reduces* the number of counties, municipalities and wards that are divided among Senate Districts, thereby respecting the integrity of those political subdivisions. Specifically, the 2012 Plan:

- Reduces the number of split political subdivisions, including counties, municipalities and wards, in the Senate map from 58 in the 2011 Plan to 37 in the 2012 Plan, a decrease of 36.2%;
- Reduces the number of total splits in the Senate map from 106 in the 2011 Plan to 71 in the 2012 Plan, a decrease of 33.0%;
- Increases the number of whole counties from 39 to 42;
- Eliminates the divisions of Darby Borough and Upper Darby Township, both in Delaware County. The only remaining split municipalities are Philadelphia and Pittsburgh, both of which must be divided because of their population size; and
- Eliminates 19 ward splits in Philadelphia while respecting the four majority-minority districts which are protected by the Voting Rights Act.

Number of Subdivisions Split in the 2012 Plan’s Delineation of Senate Districts³

	2011 Plan	2012 Plan
Counties Split (Out of 67)	28	25
Municipalities Split (Out of 2,563)	4	2
Wards Split (Out of 4,462)	26	10
TOTAL	58	37

³ By way of example, the various parts of a county may, when examined in the aggregate, be located in three separate Senate districts. For purposes of this chart, that county is counted as one split county.

Total Splits of Subdivisions Among the 2012 Plan's Senate Districts⁴

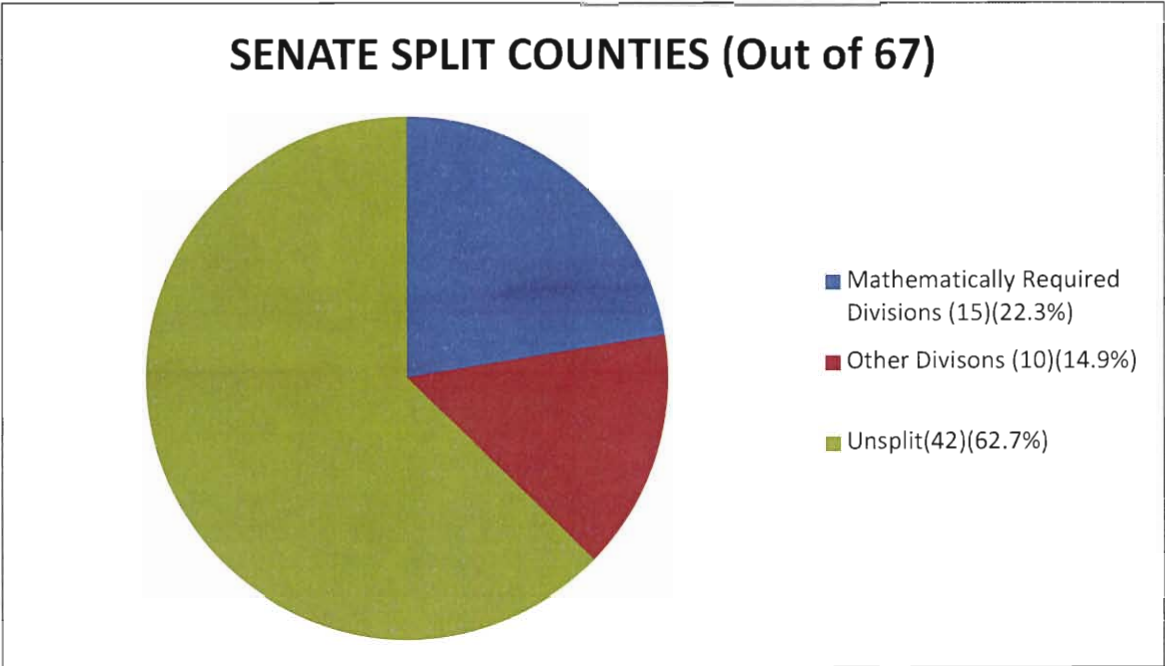
	2011 Final Plan	2012 Final Plan
Total County Splits	67	53
Total Municipality Splits	10	8
Total Ward Splits	29	10
TOTAL	106	71

When determining the Commonwealth's 50 Senate Districts, it is mathematically necessary to split 15 counties and 2 municipalities (Philadelphia and Pittsburgh) due to their high population density.⁵ In the 2012 Plan, the LRC, in the exercise of its discretion:

- Divided only ten counties having less than the population of an ideal Senate District;
- Split only the two municipalities that, as a matter of mathematic necessity, must be divided; and
- Divided only 0.2% (ten out of 4,462) of the Commonwealth's wards.

⁴ By way of example, the various parts of a county may, when examined in the aggregate, be located in three separate Senate districts. For purposes of this chart, that county is counted as having been divided two times.

⁵ It should be noted that as a political subdivision, Philadelphia is consistently counted both as a county and a municipality.

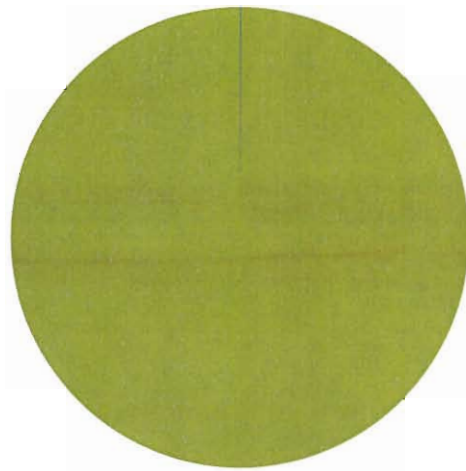


As noted above, in the 2012 Plan, 42 counties are not split. In the 2011 Plan, only 39 counties were not split, so three additional counties remain whole and undivided in the 2012 Plan. The process of redistricting involves balancing interests, and it also involves some give and take. As compared with the 2011 Plan, fifteen counties – spread across the Commonwealth – saw their overall number of splits reduced⁶ while just five counties, likewise geographically diverse, saw that number increase.⁷

⁶ Those fifteen counties are Adams, Allegheny, Carbon, Clearfield, Clinton, Dauphin, Lancaster, Lawrence, Lehigh, Montgomery, Northampton, Perry, Snyder, Somerset and Washington.

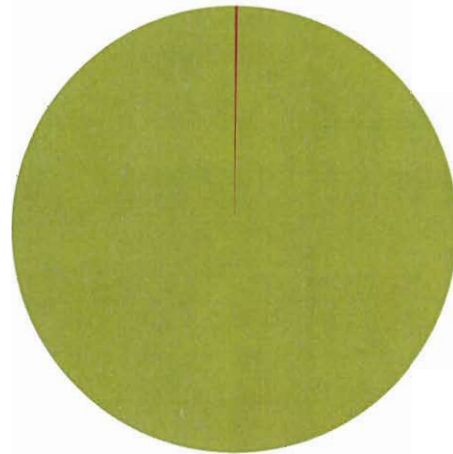
⁷ Those five counties are Beaver, Cumberland, Huntingdon, Monroe and Warren.

SENATE SPLIT MUNICIPALITIES (Out of 2563)



- Mathematically Required Divisions (2)(0.08%)
- Other Divisions (0)(0%)

SENATE WARD SPLITS (Out of 4462)



- Mathematically Required Divisions (0)(0%)
- Other Divisions (10)(0.2%)
- Unsplit (4425)(99.8%)

As the graphics above illuminate, any argument that in its 2012 Plan, the LRC excessively divided political subdivisions in the delineation of Senate Districts must fail. To the contrary, the constitutional mandate to respect the integrity of counties, municipalities and wards in those districts was met.

3. The 2012 Plan Consists of More Tightly Compact and Contiguous Senate Districts.

As noted above, in the 2012 Plan, the LRC strove to maintain an appropriate population deviation and to maintain the integrity of the boundaries of political subdivisions. It not only accomplished those goals, but it also accomplished others as well. As compared with those in the 2011 Plan, the Senate Districts delineated in the 2012 Plan are significantly more compact.

Population density, the borders of political subdivisions, and geography bear upon such analysis. Indeed, given these issues, and the various interests to be served in the reapportionment process, neither perfect geometric symmetry, nor perfect compactness, among the 50 Senate Districts can be achieved. In fact, it is well understood that in the redistricting of the Commonwealth, noncompactness cannot be eliminated in its entirety. As this Court observed in *Commonwealth ex rel. Specter v. Levin*:

[T]here is a certain degree of unavoidable noncompactness in any apportionment scheme. The population density of this state is quite uneven, and therefore attempts to achieve the overriding objective of substantial equality of population will ordinarily necessitate the drawing of districts that are not models of geometric compactness. In addition, attempts to maintain the integrity of the boundaries of political subdivisions will add another increment of unavoidable noncompactness.

293 A.2d 15, 23 (Pa. 1972).

Pennsylvania therefore demands that “compactness of [its] Legislative districts [] be evaluated objectively and with allowance for the elements of unavoidable noncompactness.” *Id.*

A number of tests have been devised in varying attempts to quantify compactness, including the Polsby & Popper Test, the Reock Test, the Population Polygon Test, the Population Circle Test, and the Ehrenburg Test. Each of these alternatives offers a different approach to the measure of compactness and each can produce significantly different results based on the mechanics of its approach to measurement. Accordingly, not one of these tests is definitive.

Additionally, as the *Specter* Court ruled, one aggrieved by a redistricting plan must produce objective or concrete data that, even when allowing for unavoidable noncompactness, establishes that the plan as a whole violates the constitutional mandate for compactness. In their challenge to the 2012 Plan, Petitioners do not meet that burden.

Moreover, as concerns Senate Districts, the 2012 Plan demonstrates greater compactness than did the 2011 Plan. Specifically, Senate Districts 3, 15 and 35, which were at issue in *Holt*, have each been redrawn to be more compact. Senate District 3 has lost its “wishbone” shape while protecting its status as a majority-minority district. Senate District 15’s “timid reaches” into Adams and Lancaster Counties have been eliminated – that district now includes a portion of Dauphin County (including the City of Harrisburg) and all of Perry County. Senate District 35’s “crooked finger” has been removed. In the 2012 Plan, the districts that are notably more compact than they were in the 2011 Plan additionally include Senate Districts 33, 38, 39, 41, and 47.

Not only is the requirement of compact territory met in the 2012 Plan, but the requirement of contiguous territory is also met. This Court has defined a contiguous district as “one in which a person can go from any point within the district to any other point (within the district) without leaving the district, or one in which no part of the district is wholly physically separate from any other part.” *Specter*, 293 A.2d at 23. All 50 Senate Districts in the 2012 Plan are contiguous: There is not a single part of any Senate District that is wholly separate from any part of that district.

ARGUMENT

A. The 2012 Plan Is Not Contrary to Law and the Challengers Cannot Meet Their Burden to Demonstrate Otherwise.

State legislative redistricting is addressed in Sections 16 and 17 of Article II of the Commonwealth's Constitution. This constitutional framework entrusts the LRC, and its five members, with developing a redistricting plan for Pennsylvania that passes constitutional muster, and they have done so. As revealed by the Background section above, and as set forth at length in the Brief of Respondent filed contemporaneously herewith (which is incorporated in full by reference), the 2012 Plan withstands any challenge that it is contrary to law.

In short, the 2012 Plan presents a constitutionally acceptable population deviation, it keeps the vast majority of political subdivisions undivided among legislative districts, it features highly compact and contiguous districts, it respects communities of interest, it preserves the cores of existing districts, it fosters continuity of representation,⁸ and it complies fully with the federal Voting Rights Act. In particular, upon remand of the 2011 Plan, the LRC specifically *reduced* the total number of divided subdivisions, and increased compactness and contiguity. In the 2012 Plan, the LRC has successfully discharged its "weighty, difficult constitutional duty." *Holt*, 38 A.3d at 761. The LRC adhered to the requirements of the Pennsylvania Constitution, the United States Constitution, the federal Voting Rights Act, and this Court's determination in *Holt*; as a result, the challengers' appeals fail and the 2012 Plan should enjoy the force of law.

⁸ The second item in the Appendix attached to this brief identifies the percentage of residents in each of the 50 existing Senate districts (as they were drawn in the 2001 Plan) that are maintained in that particular district under the 2012 Plan, the Costa Plan, the Doherty Plan and the Holt Plan. The least disruptive is the 2012 Plan, as its average retained constituency is the highest of the four plans, at 79.4%. That measure in the Costa Plan is 76.1%, in the Doherty Plan is 59.5%, and in the Holt Plan is 62.4%.

B. To the Extent Discretion Is To Be Exercised in the Redistricting Process, It Is To Be Exercised by the LRC.

As recognized in *Holt*, the Constitution identifies the five-member body responsible for redistricting the Commonwealth, the LRC, and the process for redistricting that the LRC is to follow. The challengers suggest nullification of both.

The majority and minority leaders of the Pennsylvania Senate and House of Representatives (or deputies appointed by any of them) and a neutral chairman are the five members of the LRC identified by the Constitution. Pa. Const. art. II, § 17(b). The framework the LRC is to follow in the redistricting process is also specified in the Constitution. As set forth in the Background Section above, the LRC adhered to that process before submitting its 2012 Plan.

In *Gaffney v. Cummings*, the United States Supreme Court recognized that state legislative redistricting, “dealing as it must with fundamental ‘choices about the nature of representation,’ *is primarily a political and legislative process.*” 412 U.S. 735, 749 (1973) (citations omitted) (emphasis added); *see also Holt*, 38 A.3d at 745 (“It is true, of course, that redistricting has an inevitably legislative, and therefore an inevitably political, element . . .”). The duty of reapportioning Pennsylvania is a legislative function, one performed by “the legislative branch as represented by the Legislative Reapportionment Commission.” *In re Reapportionment Plan for the Pennsylvania General Assembly (1981 Reapportionment)*, 442 A.2d 661, 667 (Pa. 1981); *see also Holt*, 38 A.3d at 733 (“[T]he Constitution placed the task of devising a redistricting plan within the bailiwick of the partisan leadership of the legislative branch, in recognition of the General Assembly’s ‘expertise in reapportionment matters.’” (Citation omitted)); *Albert v. 2001 Legislative Reapportionment Comm’n*, 790 A.2d 989, 1000 (Pa. 2002) (the redistricting of the Commonwealth by the LRC is “[t]he *legislative process*

envisioned by the Pennsylvania Constitution [and it is one] particularly suited to the considerations of community interests.” (Emphasis added.); *see also Specter*, 293 A.2d at 18-19 (constitutional obligation to have the leadership of both chambers of the General Assembly serve on the LRC ensures that “the Legislature’s expertise in reapportionment matters is essentially retained.”).

But the duty to redraw the lines that divide the Commonwealth into senatorial and representative districts is a political function as well. Because they are the result of a political process, “districting plans are integrated bundles of compromises, deals, and principles. To ask about the reason behind the design of any one particular district is typically to implicate the entire pattern of purposes and trade-offs behind a districting plan as a whole.” *Bush v. Vera*, 517 U.S. 952, 1059 (1996) (Souter, J., dissenting) (quoting Pildes & Niemi, *Expressive Harms, “Bizarre Districts,” and Voting Rights: Evaluating Election-District Appearances after Shaw v. Reno*, 92 Mich. L. Rev. 483, 585-86 (1993)).

A basic aim in the political process of state legislative redistricting is to “achiev[e] . . . fair and effective representation for all citizens.” *Gaffney*, 412 U.S. at 748 (quoting *Reynolds v. Sims*, 377 U.S. 533, 565-66 (1964)). But that goal is not furthered when the redistricting task is removed from the body entrusted with the duty to perform it by the Constitution – the LRC – and is instead “performed by federal courts which themselves *must make the political decisions necessary* to formulate a plan or accept those made by *reapportionment plaintiffs who may have wholly different goals from those embodied in the official plan.*” *Gaffney*, 412 U.S. at 749 (emphases added).

The goals of Petitioner Amanda E. Holt, Petitioner Senator Jay Costa and Petitioner Daniel P. Doherty are unclear, but they certainly depart from the goals of the LRC in its 2012

Plan. When crafting their respective maps, Holt, Costa and Doherty each individually exercised personal discretion with regard to the splits they chose to make and the boundaries they opted to preserve. For example:

- Petitioner Costa’s map includes three Senate Districts (two splits) in Clearfield County, whereas the 2012 Plan includes just two districts (one split) in Clearfield County;
- Petitioner Holt’s map includes three Senate Districts (two splits) in Northampton County, whereas the 2012 Plan includes just two districts (one split) in Northampton County; and
- Petitioner Doherty’s map includes three Senate Districts (two splits) in Lancaster County, whereas the 2012 Plan includes just two districts (one split) in Lancaster County.

But under the constitutional framework in place for redistricting, the unfettered discretion exercised by an individual challenger is entitled to no deference whatsoever, and it is certainly not allowed to supplant that exercised by the LRC. As this Court observed in *Holt*:

Our holding that the Final Plan is not entitled to a presumption of constitutionality does nothing to diminish the *LRC’s overall discretionary authority to redistrict the Commonwealth*. As we make clear *infra*, our decision in this case does not command the LRC to devise particular benchmarks in terms of the number of subdivision splits, the extent of deviation in population equality, or the parameters of compact and contiguous districts. *This paradigm recognizes the difficulty in the LRC’s task and still reposes considerable discretion in its judgment.*

....

In the Pennsylvania redistricting scheme, the LRC has a constitutional duty to formulate a Final Plan that complies with law. *Considerable discretion is reposed in the LRC to accomplish this task, which requires a balancing of multiple mandates regarding decennial districting, derived from federal and state law, most of which are of organic, constitutional magnitude.* The central difficulty of the LRC’s task arises not only because of the political and local interests that are affected by any change in the existing scheme, but also because accommodating one command can make accomplishing another command more difficult.

38 A.3d at 735 n.22, 738 (emphases added); *see also 1981 Reapportionment*, 442 A.2d at 668

(“[T]he drawing of district lines . . . necessarily involves value judgments by the Commission.”

(Emphasis added)).

Further, the challengers' plans were not submitted to the public for review and comment (i.e., no vouching occurred) and, unlike the 2012 Plan, required no compromise with others to earn a majority vote for approval of their plans.

In short, a challenger's dissatisfaction with the number of political subdivisions that the LRC ultimately split in its 2012 Plan, or with the fact that the LRC divided one or more specific counties, municipalities or wards (as opposed to others) in its 2012 Plan, does not mean that the LRC's carefully considered and constitutional plan must be tossed onto the scrap heap. As this Court has stated, "mere dissatisfaction with the fact that certain political subdivisions have been divided or have been included within particular legislative districts is not sufficient to invalidate the Final Reapportionment Plan as unconstitutional." *1981 Reapportionment*, 442 A.2d at 668.

C. The LRC Is *Not* Constitutionally Compelled to Adopt the Plan that "Best" Minimizes Population Deviation and the Splitting of Political Subdivisions While "Best" Maximizing Compactness and Contiguity.

Additionally, contrary to Petitioners' contentions, and as this Court has already held, the Constitution does not require the LRC to adopt the plan that "best" minimizes population deviation and the splitting of political subdivisions while "best" maximizing compactness and contiguity. With the passage of the 1968 Constitution, the voters of Pennsylvania spoke, and they opted for no such thing.

Among the challengers who have lodged appeals from the 2012 Plan in this Court, confusion appears to reign regarding that which is constitutionally required when redistricting of the Commonwealth is undertaken by the LRC. The LRC is *not* constitutionally compelled to adopt the plan that purports to "best" minimize population deviation and the splitting of political subdivisions while "best" maximizing compactness and contiguity.

One may make the extraordinary assumption, simply for the sake of argument, that all interested parties could reach agreement as to that which is “best” in a redistricting plan for the Commonwealth as a matter of numeric and geographic precision. Even with this extraordinary assumption, there are fundamental flaws with the proposition that the LRC is constitutionally obligated to adopt any plan that purports to “best” minimize population deviation and the splitting of political subdivisions while “best” maximizing compactness and contiguity.

Were it so obligated, the LRC itself would be rendered unnecessary. Instead, every decade, a computer could be programmed to determine the plan that “best” minimize population deviation and the splitting of political subdivisions while “best” maximizing compactness and contiguity. The results of that programming would then determine Pennsylvania’s legislative districts. This is, of course, not the procedure ratified by the Commonwealth’s voters when they amended Pennsylvania’s Constitution in 1968.

Moreover, such a process would do violence to certain legitimate and long-recognized interests, such as preserving the cores of existing legislative districts, respecting certain communities of interest, and safeguarding continuity of representation. Every decade, upon the release of census data identifying population movement and/or population increases/decreases in Pennsylvania, the deck would be completely reshuffled for the Commonwealth. A computer program’s laser-like focus on that which is “best” as a matter of mathematics or geography would result in a drastic negative effect on other legitimate redistricting considerations.

As described in the Background section above, in the political process of redistricting Pennsylvania, the LRC appropriately considered, and furthered, consistently-applied policies in addition to those expressly mandated in the Commonwealth’s Constitution (population equality, compactness, contiguity, and integrity of political subdivisions). As has been judicially

recognized, there are additional traditional redistricting principles that are race neutral and appropriate for a redistricting body to consider. “[T]he more subjective principles[] includ[e] preservation of communities of interest, preservation of cores of prior districts, protection of incumbents, and compliance with Section 2 of the Voting Rights Act of 1965.” National Conference of State Legislatures, *Redistricting Law 2010* at 106 (2009).

If a computer program focuses only on that which “best” minimizes population deviation and the splitting of political subdivisions while “best” maximizing compactness and contiguity, it necessarily excludes all other considerations, including application of any principle that is “more subjective.” Indeed, such an approach utterly fails to consider *any* of the following additional – and appropriate – factors impacting the decision-making process when the redistricting of the Commonwealth is undertaken by the LRC: majority-minority districts under the Voting Rights Act; the cores of existing legislative districts; various communities of interest; or the significance of elected state officials’ seniority, and their constituents’ interest in the continuity of representation. Any arbitrary exclusion of these traditional districting principles from the legislative and political process of redistricting the Commonwealth is unfounded. Furthermore, any redistricting plan for Pennsylvania produced by a methodology that has eliminated the dictates of the Voting Rights Act from consideration is one that will be established as contrary to law.

But in the final analysis, it is folly to suggest that all interested parties could agree, as a matter of numeric and geographic precision, on that which “best” minimizes population deviation and the splitting of political subdivisions while “best” maximizing compactness and contiguity. The extraordinary assumption identified above masks the role discretion plays.

Indeed, the very question of that which is “best” is itself subject to debate. Which of these two plans is “best”: A plan with a 3.5% population deviation and 100 splits, or a plan with a 7% deviation and 50 splits? The selection of one over the other is, of course, an exercise of judgment.

However, the endeavor to identify that which is “best” in a redistricting plan from a numeric or geographic perspective is an academic exercise that need not be resolved, as this Court’s decision in *Holt* did not establish any such fixed parameters:

In its redistricting jurisprudence, this Court has not purported to set any immovable “guideposts” for a redistricting commission to meet that would guarantee a finding of constitutionality, as against challenges premised upon population equality, subdivision splits, compactness, or contiguity. . . . The “guideposts” to which a redistricting commission is bound are the U.S. Constitution, the Pennsylvania Constitution, and this Court’s relevant, specific holdings.

Holt, 38 A.3d at 736.

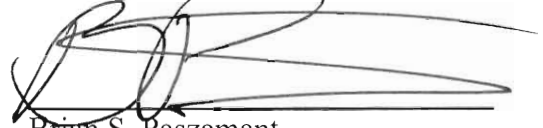
The guideposts to which the LRC is bound speak to a balancing by that entity of various and multiple legitimate interests in the redistricting process, as discussed above and at length in the Brief of Respondent. They do not demand that which the challengers urge: the adoption of only the most numerically and geographically precise redistricting plan that can be drawn upon exclusive consideration of the four factors identified expressly in the Constitution (population equality, subdivision splits, compactness, and contiguity).

Petitioners’ improper suggestion that the LRC is constitutionally obligated to adopt any plan “best” minimizing population deviation and the splitting of political subdivisions while “best” maximizing compactness and contiguity must be firmly rejected. Further, because the Petitioners have failed to meet their burden to demonstrate that the 2012 Plan is contrary to law, their appeals must be dismissed.

CONCLUSION

For all the foregoing reasons, *amicus curiae*, Senator Dominic Pileggi, urges this Court to rule in favor of Respondent, 2011 Legislative Reapportionment Commission, to dismiss the instant appeals of Petitioners, and to determine that the Final 2012 Legislative Reapportionment Plan filed by the Respondent on June 8, 2012, has the force of law.

BLANK ROME LLP



Brian S. Paszamant
PA Bar Id. No. 78410
Mary Ann Mullaney
PA Bar Id. 60503
One Logan Square
130 N. 18th Street
Philadelphia, PA 19103
Tel: (215) 569-5500
Fax: (215) 569-5555
paszamant@blankrome.com
mullaney@blankrome.com

- and -

DLA PIPER LLP (US)



Carl M. Buchholz
PA Bar Id. No. 65567
Brian M. Robinson
PA Bar Id. No. 204364
One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, PA 19103
Tel.: (215) 656-3300
Fax: (215) 656-3301
carl.buchholz@dlapiper.com
brian.robinson@dlapiper.com

Dated: August 20, 2012

*Counsel for Amicus Curiae,
Senator Dominic Pileggi*

CERTIFICATE OF SERVICE

I, Mary Ann Mullaney, hereby certify that two true and correct copies of the foregoing *Amicus Curiae* Brief of Senator Dominic Pileggi and Appendix were served on August 20, 2012, upon the following by first-class mail, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121, and service of the foregoing document was additionally effected by e-mail upon those for whom an e-mail address is specified below:

Joseph A. Del Sole
William S. Stickman IV
James R. Thornburg
Stephen J. Del Sole
Del Sole Cavanaugh Stroyd LLC
The Waterfront Building, Suite 300
200 First Avenue
Pittsburgh, PA 15222
(412) 261-2393
jdelsole@dscslaw.com
wstickman@dscslaw.com
jthornburg@dscslaw.com
sdelsole@dscslaw.com
*Counsel for Respondent, 2011 Legislative Reapportionment
Commission*

Charles E. O'Connor
2011 Legislative Reapportionment Commission
North Office Building, Room 104
Harrisburg, PA 17120
coconnor@redistricting.state.pa.us
*Counsel for Respondent, 2011 Legislative Reapportionment
Commission*

Dennis J. Baylor
2564 Mountain Road
Hamburg, PA 19526
(610) 781-8746
dennisbaylor@gmail.com
Pro Se

Samuel C. Stretton
Law Offices of Samuel C. Stretton
301 S. High Street, P.O. Box 3231
West Chester, PA 19381
(610) 696-4243
s.stretton@verizon.net

Counsel for Petitioners State Representative John P. Sabatina, Jr. and State Representative Thomas R. Caltagirone and Counsel for Petitioners Council President Holly Brown, Mayor Carolyn Comitta, John Hellman, Mayor Leo Scoda, Council President Rich Kirkner and Councilperson Jennifer Mayo

Eric Louis Ring
Kelly R. Koscil
Law Office of Eric Ring
2335 Darby Road
Havertown, PA 19083
(610) 789-4450
Eric@EricRingLaw.com
Kelly@EricRingLaw.com

Counsel for Petitioners Thomas Schiffer, Rachel J. Amdur, Joan Tarka, Lawrence W. Abel, Margaret G. Morscheck, Lawrence J. Chrzan, Shirley Resnick, Susan Jewett and Carl Duzen

Peter M. Good
Caldwell & Kearns
3631 N. Front Street
Harrisburg, PA 17110
(717) 232-7661
pgood@cklegal.net
Counsel for Petitioner Patty Kim

Frank A. Rothermel
Bernhardt, Rothermel & Siegel
1515 Market Street, Suite 1540
Philadelphia, PA 19102
(215) 568-0100
frothermel@bernhardt-rothermel.com

Counsel for Petitioners Daniel P. Doherty, Cheryl L. Nicholas, Stacy C. Hannan, Kirstine L. Kipphut, Susan Saba, Tara Anthony, Paula Brensinger and Seth D. McElroy

Margaret M. Stuski
908 W. Walnut Street
Wormleysburg, PA 17043
(717) 599-2429
mstuski@yahoo.com

Counsel for Petitioners State Representative Angel Cruz, State Representative W. Curtis Thomas, State Representative Rosita C. Youngblood, State Representative John P. Sabatina, Jr., Angel Ortiz, Brian Eddis, Joseph F. West, Sr., and Karen A. West

Virginia A. Gibson
David Newmann
Hogan Lovells US LLP
1835 Market Street, 29th Floor
Philadelphia, PA 19103
(267) 675-4600
virginia.gibson@hoganlovells.com
david.newmann@hoganlovells.com

Counsel for Petitioners Amanda E. Holt, Elaine Tomlin, Luis Nudi, Diane Edbril, Dariel I. Jamieson, Lora Lavin, James Yoest, Jeffrey Meyer, Christopher H. Fromme, Timothy F. Burnett, Chris Hertzog, Glen Eckhart, Joan Jessen, Elizabeth Rogan, James Hertzler, Gary Eichelberger, Barbara B. Cross and Mary Frances Ballard

Michael Churchill
The Public Interest Law Center of Philadelphia
1709 Ben Franklin Parkway, Floor 2
Philadelphia, PA 19103
(215) 627-7100

Counsel for Petitioners Amanda E. Holt, Elaine Tomlin, Luis Nudi, Diane Edbril, Dariel I. Jamieson, Lora Lavin, James Yoest, Jeffrey Meyer, Christopher H. Fromme, Timothy F. Burnett, Chris Hertzog, Glen Eckhart, Joan Jessen, Elizabeth Rogan, James Hertzler, Gary Eichelberger, Barbara B. Cross and Mary Frances Ballard

Adam Craig Bonin
Law Office of Adam C. Bonin
1900 Market Street, 4th Floor
Philadelphia, PA 19103
(215) 864-8002
adam@boninlaw.com

Counsel for Petitioners Josh Shapiro, Leslie Richards, Daylin Leach, Samuel Adenbaum, Ira Tackel, Marcel Groen, Harvey Glickman and David Dormont

Clifford B. Levine
Alice B. Mitinger
Daniel J. Colaizzi
Cohen & Grigsby, P.C.
625 Liberty Avenue, 5th Floor
Pittsburgh, PA 15222-3152
(412) 297-4900

Counsel for Petitioners 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 Brewster, and Senator Timothy J. Solobay

David J. Montgomery
The Montgomery Law Firm, LLC
100 Ross Street, Suite 510
Pittsburgh, PA 15219
(412) 904-2641
davidmontgomeryjd@gmail.com
Counsel for Petitioners Tony Amadio and Joe Spanik

J. Deron Gabriel
U.S. Steel Tower, Suite 660
600 Grant Street
Pittsburgh, PA 15219
(412) 261-6124
Counsel for Petitioners Mayor Richard Lattanzi and Councilman Richard Ford

Charles Anthony Pascal Jr.
402 Grant Avenue
Leechburg, PA 15656
(724) 954-3770
Counsel for Petitioners Kathryn Vargo, Jennifer Grab, Sandra Wolfe, Antonio Lodico, Emily Cleath, Daniel McArdle Booker, Rachel Canning, and Patricia Clark

Honorable Linda L. Kelly
Office of the Attorney General
for the Commonwealth of Pennsylvania
15th Floor, Strawberry Square
Harrisburg, PA 17120
Participant, Attorney General of Pennsylvania

Shauna Christine Clemmer
Pennsylvania Department of State
301 N. Office Building
Harrisburg, PA 17120
(717) 783-0736
Counsel for Participant, the Bureau of Elections of the Department of State

Dated: August 20, 2012



MARY ANN MULLANEY
BLANK ROME LLP
Attorney Id. No. 60503
One Logan Square
Philadelphia, PA 19103
Telephone: (215) 569-5598
Facsimile: (215) 832-5598
Email: mullaney@blankrome.com

Counsel for *Amicus Curiae*,
Senator Dominic Pileggi

APPENDIX

APPENDIX

ITEM NO. 1

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

Amanda Holt, et al.,	:	No. 7 MM 2012
Petitioners	:	
	:	
V	:	
	:	
2011 Legislative Reapportionment	:	
Commission,	:	
Respondent	:	

BEFORE: Chief Justice Ronald D. Castille
Justice Thomas G. Saylor
Justice J. Michael Eakin
Justice Max Baer
Justice Debra McCloskey Todd
Justice Seamus P. McCaffery
Justice Joan Orié Melvin

DATE: January 23, 2012, 9:30 a.m.

PLACE: Main Capital Building
Harrisburg, Pennsylvania

Ramona L. Devlin, Reporter
Notary Public



1 basic building block of a reapportionment plan is a
2 voting district. Everybody in a voting district has to
3 have the same ballot. That is just a practical thing.

4 Voting districts are maintained by the
5 counties. There are several throughout the
6 Commonwealth where the counties haven't for decades or
7 even longer perhaps, reapportioned their own voting
8 municipalities, so you have an outlier of either this
9 totally unpopulated or we have calculated approximately
10 45 people in the entire Commonwealth are in one of
11 these outlier. There is nothing the Commission can do
12 about that.

13 And the problem is, if the Commission has
14 to take pimples like that on the plan and make them
15 work, then you are dealing with perhaps running into
16 actual Constitutional issues, such as making a
17 municipal split to account for a depopulated area of
18 state game land.

19 JUSTICE SAYLOR: That may all be, I
20 believe it well is, but how about dividing the county
21 seat? Only 67 -- well, if we don't count Philadelphia,
22 there is 66 county seats. Why would you divide a
23 county seat in terms of a community of interest? I
24 heard Mr. Stretton's argument is if by not doing that,
25 you might increase the deviation marginally but not to



1 some level of a Constitutional deprivation in terms of
2 -- in other words, his argument is population equality
3 alone is not the sine qua non as a matter of state
4 Constitutional jurisprudence or indeed federal
5 Constitutional jurisprudence.

6 MR. STICKMAN: I think that the answer to
7 that goes to the issue of the definition of necessity
8 and also ties in together with the issue the interest
9 of population. The first thing I would say is West
10 Chester borough is the county seat of Chester County,
11 but what we are dealing with here, it is akin to
12 putting together a mosaic --

13 JUSTICE SAYLOR: I understand it's a
14 puzzle and something always has to give in a puzzle.
15 I'm questioning -- you understand the tone of my
16 question.

17 MR. STICKMAN: I do. And I think --

18 JUSTICE SAYLOR: County seat historically
19 has been represented by one district since the origin
20 of the county, I assume, and now, it is redefined.

21 MR. STICKMAN: I think this Court has
22 addressed the issue of -- keep in mind, we are dealing
23 with state legislators, not local legislators. This
24 Court has said, the issues of a community of interest
25 or any particular interest that West Chester or any



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.

Ramona L. Devlin, Notary Public
Reporter

The foregoing certification does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.



APPENDIX

ITEM NO. 2

Retrospective Retained Constituency Among Senate Districts

SenateDistrict	2012 Plan	Costa Plan	Doherty Plan	Holt Plan
01	91.1%	91.1%	0.0%	0.0%
02	72.2%	72.2%	56.2%	62.2%
03	77.3%	77.3%	41.7%	39.6%
04	98.3%	98.3%	27.3%	38.0%
05	92.0%	92.0%	86.9%	86.9%
06	100.0%	77.1%	76.4%	77.1%
07	86.5%	86.5%	74.2%	81.3%
08	87.1%	87.1%	55.3%	53.9%
09	69.8%	64.0%	58.7%	58.7%
10	94.4%	53.1%	53.1%	54.1%
11	83.7%	83.7%	52.6%	84.1%
12	90.3%	63.3%	43.7%	43.7%
13	78.0%	78.0%	76.8%	78.0%
14	90.8%	90.8%	69.1%	65.6%
15	69.4%	88.4%	90.7%	90.7%
16	73.9%	73.9%	73.9%	68.5%
17	96.9%	96.9%	87.3%	87.3%
18	65.1%	65.1%	64.1%	60.6%
19	56.3%	56.3%	76.1%	80.0%
20	86.9%	81.2%	57.5%	57.5%
21	80.5%	70.7%	0.0%	0.0%
22	97.5%	97.5%	87.8%	87.8%
23	96.1%	74.5%	46.7%	62.3%
24	49.5%	30.2%	13.9%	43.9%
25	87.8%	69.2%	35.2%	24.3%
26	88.6%	84.4%	68.5%	68.5%
27	92.3%	85.2%	89.7%	89.9%
28	79.8%	79.7%	70.9%	74.4%
29	66.5%	66.5%	30.6%	78.6%
30	70.7%	100.0%	73.8%	73.8%
31	81.7%	86.8%	93.3%	93.3%
32	91.3%	64.6%	64.6%	64.6%
33	74.5%	90.7%	53.3%	53.3%
34	80.6%	88.6%	75.2%	80.6%
35	74.7%	69.0%	77.7%	74.7%
36	76.9%	76.9%	75.9%	76.9%
37	97.4%	55.5%	58.2%	27.7%
38	29.4%	70.8%	0.0%	52.9%
39	89.2%	56.1%	65.1%	65.1%
40	0.0%	0.0%	67.5%	0.0%
41	83.8%	78.8%	35.8%	35.8%
42	82.1%	94.9%	41.6%	66.4%
43	82.4%	89.2%	52.0%	32.8%
44	60.7%	60.0%	29.8%	29.8%
45	84.6%	63.6%	63.7%	40.0%
46	91.9%	89.2%	90.7%	89.2%
47	88.9%	98.8%	78.5%	98.8%
48	49.0%	49.0%	47.9%	77.4%
49	94.8%	100.0%	95.5%	100.0%
50	87.1%	87.1%	70.2%	87.1%
average	79.4%	76.1%	59.5%	62.4%
median	83.8%	78.4%	64.4%	66.0%