

IN THE SUPREME COURT OF PENNSYLVANIA

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No. 133 MM 2012

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IN RE: 2011 LEGISLATIVE REAPPORTIONMENT PLAN FOR THE  
PENNSYLVANIA SENATE AND THE PENNSYLVANIA HOUSE OF  
REPRESENTATIVES

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PETITION OF AMANDA E. HOLT, ELAINE TOMLIN, LOUIS 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

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**PETITIONERS' LIMITED REPLY IN OPPOSITION TO RESPONDENTS'  
IMPROPER AND UNTIMELY REQUEST FOR RECONSIDERATION OF  
ISSUES DECIDED BY *HOLT I***

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## I. ARGUMENT

The above-named Petitioners (“Petitioners”) submit this Reply for the limited purpose of opposing, and asking that the Court summarily strike, the improper request for reargument set forth in the Brief of the 2011 Legislative Reapportionment Commission (“LRC”).

The LRC’s Brief attacks, and asks “that this Court reconsider,” LRC Br. at 20-22, a centerpiece of *Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711 (Pa. 2012) (“*Holt I*”). *Holt I* rejected the LRC’s argument that the Court’s review was “confined to the four corners of the [LRC’s] Final Plan,” holding instead that alternative redistricting plans—even those proposed by private citizens—may be used “to prove constitutional infirmity” of the LRC’s plan. *Id.* at 728, 732 In so holding, the Court considered and distinguished *In re Reapportionment Plan for Pennsylvania General Assembly*, 442 A.2d 661 (Pa. 1981) (“*In re 1981 Plan*”), which had noted that the mere existence of a “‘preferable’ or ‘better’” alternative plan is not sufficient to prove a constitutional violation. *Holt I* explained that this statement addressed the “standard of review,” rather than the “scope of review,” and therefore did not preclude consideration of alternative plans. *Holt I*, 38 A.3d at 731.

Now, the LRC wants a second bite at the apple. It claims that *Holt I*’s scope-of-review analysis was “based, at least in part, upon a misstatement of fact by Appellant *Holt*,” LRC Br. at 22 (emphasis added), regarding the nature of the challenges considered by *In re 1981 Plan*. The LRC’s reargument request should be summarily stricken. The

request is procedurally improper and substantively baseless for multiple independent reasons.

First, it violates the Rules of Appellate Procedure. A request for reargument must be presented as an application pursuant to Rule of Appellate Procedure 2541 and 2544, and must be filed “*within 14 days after entry of the judgment or other order involved.*” Pa. R.A.P. 2542(a)(1) (italics added). The LRC never filed an application for reargument, and the deadline for doing so passed *more than six months ago*. The LRC’s failure to file a timely application for reargument precludes its request for reconsideration. Pa. R.A.P. 2547.

Second, the LRC cannot meet its burden of showing “compelling reasons” for reargument.” Pa. R.A.P. 2543. Reargument may be considered “[w]here the court has overlooked or misapprehended (as by misquotation of text or misstatement of result) a controlling or directly relevant authority.” *Id.*, Official Note. However, far from “overlooking” *In re 1981 Plan, Holt I* analyzed that decision at length, and the LRC cannot identify a single word of *In re 1981 Plan* that *Holt I* misquoted or misstated. At best, the LRC accuses the Court of misstating not the text or result of *In re 1981 Plan*, but the rather the content of a challenge presented in the case. That is simply not a valid basis for seeking reargument.

Third, the LRC’s contention that Petitioners’ counsel or this Court misstated the nature of the challenges at issue in *In re 1981 Plan* is incorrect. The Court correctly recognized that *Holt I* was its first opportunity to consider an alternative redistricting plan as evidence that the LRC’s plan created unnecessary subdivision splits. Petitioners in

*Holt I* presented that issue by basing their exceptions on an alternative plan which, for the first time, *accepted* the LRC’s maximum population deviation and nonetheless achieved dramatic reductions in the number of subdivision splits. By contrast, *In re 1981 Plan* considered, and rejected, a different theory: that the LRC should have reduced the number of subdivision splits by adopting a *higher* deviation from population equality. 442 A.2d at 666. The Court in *In re 1981 Plan* had no opportunity to consider, and was not presented with, an alternative plan which provided an evidentiary basis for challenging the overall number of subdivisions splits by themselves. 1/

Fourth, with respect to the consideration of alternative plans, all of the arguments the LRC now presents were “fully aired” in *Holt I*, or attempt to “recast[ ] or supplement[ ] the argument [the LRC] actually made,” in which case the new arguments were “waived and an inappropriate subject of reargument.” *Com. v. VanDivner*, 983 A.2d 1199, 1201 (Pa. 2009). The LRC argues that its plans should be afforded special deference under the “constitutional commission system,” Br. at 21, but *Holt I* rejected that argument. 38 A.2d at 731, 733-734. The LRC argues that consideration of alternatives presents “practical difficulty,” Br. at 21, but *Holt I* rejected that argument. 38 A.2d at 732-733. The LRC once again arrogantly contends that private citizens are incapable of preparing suitable redistricting plans, Br. at 21, but *Holt I* emphatically rejected that argument, too. 38 A.2d at 753 n.31.

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1/ The LRC’s reliance on the petitions and briefs filed in *In re 1981 Plan* is misplaced, because those materials cannot supersede the description of the challenges provided by Court in its *In re 1981 Plan* decision. In any event, those materials at best show that Petitioner Common Cause attached an alternative plan (premised on greater population deviation) to its brief on appeal. There is no indication that Common Cause’s exceptions to the LRC plan were based on an alternative plan, or that any such plan was made part of the evidence before the LRC.

## II. CONCLUSION

Neither this Court nor Petitioners should be asked to devote a single moment of oral argument time to revisiting the crucial issues that this Court so thoroughly considered and carefully decided in *Holt I*. Petitioners respectfully request that this Court summarily strike the LRC's request for reconsideration.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 2012, I caused a true and correct copy of the foregoing Reply Brief of Petitioners to be served via electronic mail on the following:

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