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**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**No. 126 MM 2012**

**DENNIS J. BAYLOR,  
Petitioner.**

**vs.**

**COMMONWEALTH OF PENNSYLVANIA  
2011 LEGISLATIVE REAPPORTIONMENT COMMISSION  
Respondent.**

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Petition for Review from the Second Final Legislative Reapportionment Plan  
of the 2011 Reapportionment Commission Filed with  
the Secretary of the Commonwealth on June 8, 2012

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Reply Brief of Petitioner Dennis J. Baylor

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## **Substantive issues**

The respondent's brief contains numerous mis-interpretations of petitioner's brief, for which he must accept most of the responsibility. In the e-mail accompanying the "Exceptions" filed with the LRC on the May 14, 2012 deadline, I explained I had been violently ill (food poisoning) which prevented me from delivering the filing in person. What I did not expound upon at length is how my work was affected. It was rush product, lacking focus, good presentation, and editing; I thought that would be evident without further explanation..

Under Pa R.A.P. Rule 1513 (c), the exact "Statement of Exceptions" as filed with the LRC, became Exhibit "B" to the "Petition for Review" initiating the instant matter; thereby perpetuating numerous clerical errors. The two documents are identical in all material respects, including clerical errors, such as omitted section titles. For example, a section heading like "Petitioner's Proposed 2011 Senate Seats" should have appeared atop page 19, thereby clearly delineating that portion of my submittal.

That said, that is no excuse for the unwarranted inferences the respondent ascribes to my work. Consider the following:

### **DATA**

On page 80 of the **BRIEF OF RESPONDENT** is the assertion-- "Further, Appellant Baylor admits that some of his district draws were based on estimation, as opposed to concrete data. (Baylor Brief , p. 13)" vs. Baylor Brief, p. 13 "To the best of my knowledge, my proposal does not ***violate the boundary of any school district***, but

having said that I had to estimate, in some cases, the census blocks comprising the school district." *Emphasis added* Split census blocks were the underlying cause.

-- According to information presented at a seminar entitled "How to Draw Redistricting Plans That Will Stand Up in Court" by the NATIONAL CONFERENCE OF STATE LEGISLATURES on January 22, 2011:

"The first requirement for any redistricting plan to stand up in court is to provide districts of substantially equal population. But how do you know the population? The obvious way is to use official Census Bureau population counts from the 2010 census." Page 6

This methodology is a implied requirement of Pa Const., Art. II, Section 17 , as well. But the LRC chose to use data that they "Adjusted".

"The 2011 adjusted U.S. Census population data corrects issues in the raw data received from the Census Bureau, such as voting district code and name discrepancies, municipality name discrepancies, precinct changes which may have been made after the U.S. Census' Phase 2 program, and split block issues. This data has been certified by the Legislative Reapportionment Commission as being in useable form for redistricting, and it is the official data used by the Commission to redraw the boundaries of state legislative districts. This official data is also used for congressional redistricting." LRC website <http://www.redistricting.state.pa.us>

"Public Law 94-171, 89 Stat. 1023 (1975) (codified as amended at 13 U.S.C. § 141(c)), permits each state to request the Census Bureau to provide it with population counts tabulated in accordance with the geographic areas identified by the state and requires the Bureau to provide those counts before April 1, 2011. These counts are often referred to as the "PL data." Most states ask the Census Bureau to provide them with population counts by precincts and other political units and work with the Bureau for years **before the census** to get those precinct boundaries included in the census geography." *emphasis added* "How to Draw Redistricting Plans That Will Stand Up in Court" page 9

Obviously the LRC made corrections after the fact, and in some respects it is a work in progress.

### **VOTING DISTRICT DATA**

For all the criticism heaped on petitioner for not providing “voting district data”, it is worth noting respondent never provides same in printed form, in any of their filings.

### **MEMORIALIZING A PLAN WITH THE LRC**

Another unwarranted assertion, same page – “This proposed plan was never preserved before the Commission.” From petitioner’s filing in the foregoing 9 mm 2012, up to and including the May 14, 2012 filing with the LRC instigating the instant action, the LRC or it’s counsel has been served this proposal repeatedly. Granted, the plans have increasing specificity, but the foundation is unchanged from the first.

If clerical error such as that noted above is forms the basis of the LRC’S claim, Petitioner would respectfully suggest it be dismissed out of hand.

### **MAPS & FILES**

My brief contains 10 unique regional maps proposing 203 House districts, supplemented by exploded views of the Philadelphia, and Pittsburgh regions, and an state index map. (Baylor Brief, Appendix B) Similarly, Pennsylvania’s 50 Senate districts are fully delineated on two state maps, and two exploded views. (Baylor Brief, Appendix C) Admittedly, my maps are small, but I did not have the resources of the 4 caucus IT departments, or 4 caucus print shops to rely on, or counsel’s undoubtedly impressive steno pool. In fact, ArcView GIS software required to view, perform calculations and manipulate Tiger/line “shapefiles” costs \$2,195.00 for single seat.

Such software would be required to print "large format" maps on a \$2,500.00 color plotter. Petitioner could not afford to sub-contract such work either.

Pa R.E. Rule 1006 Provides that Summaries may be presented to show evidence too voluminous to be conveniently presented in court, the abovementioned maps were submitted with my Brief to fill that purpose, therefore interpreting respondent's brief as a demand for production of the originals under Rule 1006, Petitioner is providing copies of the relevant "voter district files" to the court and LRC counsel on computer data disc. Petitioner will provide other Petitioner counsel the same information via electronic mail.

### **Procedural issues**

Pennsylvania's Sunshine Law became an issue, because Petitioner contends that no part of the deliberations leading up to the ratification of an apportionment plan can occur in secrecy, and Petitioner accepted at face value Chair McEwen's representations that Pennsylvania's Sunshine Act 65 Pa C.S.A. § 701 et. seq. was the law governing the issue, which proved untrue. The LRC does not fall within the definition of "Agency"<sup>1</sup> and as established in Holt; LRC meetings are not meetings of the "General Assembly" 65 Pa. C.S.A. § 712, so they do not fall within the law's domain. Therefore, the issue of a Sunshine Law procedural

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<sup>1</sup> "**Agency.**" The body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business, of all the following: the General Assembly, the executive branch of the government of this Commonwealth, including the Governor's Cabinet when meeting on official policymaking business, any board, council, authority or commission of the Commonwealth or of any political subdivision of the Commonwealth or any State, municipal, township or school authority, school board, school governing body, commission, the boards of trustees of all State-aided colleges and universities, the councils of trustees of all State-owned colleges and universities, the boards of trustees of all State-related universities and all community colleges or similar organizations created by or pursuant to a statute which declares in substance that the organization performs or has for its purpose the performance of an essential governmental function and through the joint action of its members exercises governmental authority and takes official action. The term does not include a caucus or a meeting of an ethics committee created under rules of the Senate: or House of Representatives.

violation is withdrawn, and a violation our Constitution's right of the people to a free government founded our authority (Pa. Const. Art. I, Sec. 2<sup>2</sup>) is substituted in its stead.

The fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent and purpose of the framers and the people who adopted it. C.J.S. Constitutional Law § 16 The words of a constitution may not be ignored as meaningless; in construing a constitution some meaning or effect should be given to all the words or language used therein if it is possible to do so in conformity with the intention of the framers. C.J.S. Constitutional Law § 19 The provisions of the Constitution must be all construed together. Cali v. City of Philadelphia, 1962, 177 A. 2d 824, 406 Pa. 290 Thus, in ascertaining both the intent and purpose, as well as the meaning, of the Constitution or a part thereof, it should be construed as a whole, Long v. School District of Cheltenham Twp., 1921, 112 A. 545, 269 Pa. 472, and, as far as possible, each provision should be construed so as to harmonize with all the others. Berardocco v. Colden, 1976, 366 A.2d 574, 469 Pa. 452.

From our first Constitution enacted in 1776, language virtually identical to that of Pa. Const. Art. I, Sec. 2 (1968) Political Powers, has been incorporated into every Declaration of Rights.<sup>3</sup> It has been stated that legislative interpretations of organic law command judicial consideration Montgomery v. Martin, 1928, 143 A. 505, 294 Pa. 25 and because of the injustice that would inevitably result by the disturbing of constitutional constructions after a long period of acquiescence therein, during which

<sup>2</sup> All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

<sup>3</sup> IV. That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them. Pa. Const. Chapter 1 (1776)

many rights will necessarily have been acquired, Moers v. City of Reading, 1853, 21 Pa. 188. the construction of the Constitution adopted and acted on by the Legislature for many years, is entitled to great weight. *Id.*

To further ensure that the "Declaration of Rights" remained unaltered, and government remained "at all times accountable to them" [the people] Pennsylvania's Constitution of 1776 contained language similar to Pa. Const. Art. I, Sec. 25<sup>4</sup>. Pa. Const. Chapter II, Sect. 46: "The declaration of rights is hereby declared to be a part of the constitution of this commonwealth, and ought never to be violated on any pretence whatever."

Legislative redistricting "involves the basic rights of the citizens of Pennsylvania in the election of their state lawmakers." Butcher v. Bloom, 203 A.2d 556, 559 (Pa. 1964) Therefore under the provisions of the Political Powers clause to Pennsylvania's Constitution, deliberative sessions conducted are void ab initio.

### Conclusion

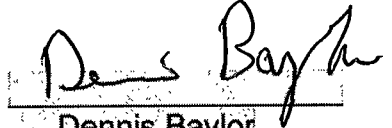
The 2011 Legislative Reapportionment Commission's second Final Plan is contrary to law, saddled with congenital defects which cannot be corrected because of errors made in the Pennsylvania census, years before the census was conducted. Any plan based on the existing database would be mere conjecture. Petitioner would suggest the LRC and Court consider how big the "correction" will be with the 2020 census, and plot a course to ameliorate a disaster.

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<sup>4</sup> **Section 25. Reservation of Powers in People.** To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.



Respectfully Submitted



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Dated: Sept. 3, 2012

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