

BEFORE THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

STATE REPRESENTATIVE JOHN P. : SUPREME COURT DOCKET
SABATINA, JR. FOR THE 174TH : NO.
LEGISLATIVE DISTRICT :
2217 Fuller Street :
Philadelphia, PA 19152 :
and :
STATE REPRESENTATIVE THOMAS R. :
CALTAGIRONE FOR THE 127TH :
LEGISLATIVE DISTRICT :
2521 Hill Road :
Reading, PA 19606, :
PETITIONERS :
V. :
2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION, :
RESPONDENT :

PETITION FOR REVIEW
IN THE NATURE OF AN APPEAL FROM THE FINAL PLAN OF THE 2011
LEGISLATIVE REAPPORTIONMENT COMMISSION DATED JUNE 8, 2012,
INCLUDING THE 174TH LEGISLATIVE DISTRICT OF JOHN P. SABATINA, JR.
AND THE 127TH LEGISLATIVE DISTRICT OF THOMAS R. CALTAGIRONE

Pursuant to Section 17(d) of Article II of the Pennsylvania Constitution and Pennsylvania Rules of Appellate Procedure 3321, the Petitioners, State Representative John P. Sabatina, Jr. and State Representative Thomas R. Caltagirone; are citizens and residents in the Commonwealth of Pennsylvania and as individual voters in both the 174th Legislative District for Mr. Sabatina and the 127th Legislative District for Mr. Caltagirone, file this Petition for Review seeking this Honorable Court's review of the June 8, 2012 final Reapportionment Plan approved by the 2011

Legislative Reapportionment Commission. In support of this plan, the Petitioners state as follows:

A.) STATEMENT OF JURISDICTION

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

2. This appeal is addressed to this Honorable Court's appellate jurisdiction and is in the nature of a Petition for Review, pursuant to Pennsylvania Rules of Appellate Procedure 3321.

B.) IDENTITY OF PARTIES SEEKING REVIEW

3. John P. Sabatina, Jr. is a citizen and resident of the Commonwealth of Pennsylvania residing therein at 2217 Fuller Street, Philadelphia, Pennsylvania 19152. He is a duly elected State Representative in the 174th Legislative District in Philadelphia and brings this Petition both as an elected State Representative and as an individual registered Democratic voter who is aggrieved by the final Reapportionment Plan of the 2011 State Reapportionment Commission.

4. The Petitioner, Thomas R. Caltagirone, is a citizen and resident of the Commonwealth of Pennsylvania residing

therein at 2521 Hill Road, Reading, Pennsylvania 19606. He is a duly elected State Representative in the 127th Legislative District in Pennsylvania and a registered voter in Berks County, Pennsylvania in the 127th Legislative District. He brings this Petition as the elected State Representative in the 127th Legislative District and as an individual and registered Democratic voter who is aggrieved by the final Reapportionment Plan of the 2011 Legislative Reapportionment Commission.

C.) IDENTITY OF RESPONDENT

5. The Respondent is the 2011 Legislative Reapportionment Commission of the Commonwealth of Pennsylvania. Pursuant to 17(b) of Article II of the Pennsylvania Constitution, the Commission is composed of Senator Dominic Pileggi, the Majority Leader of the Pennsylvania Senate; Senator Jay Costa, the Minority Leader of the Pennsylvania Senate; State Representative Michael Turzai, the Majority Leader of the House of Representatives; State Representative Frank Dermody, the Minority Leader of the Pennsylvania House of Representatives; and the Honorable Stephen McEwen, the fifth member selected by this Honorable Court after the four other Commission Members were unable to agree on a fifth member. Judge McEwen serves as a Chair of the Commission and as a Senior Judge on the Superior Court of Pennsylvania. Charles O'Conner, Jr. is the Executive Director of the 2011 Legislative Reapportionment Commission with

an address of 104 North Office Building, Harrisburg, Pennsylvania 17120-3079. The 2011 Legislative Reapportionment Commission is represented by the Honorable Joseph A. Dellsole, Dellsole, Cavanaugh, Strode, LLC, 200 First Avenue, Suite 300, Pittsburgh, Pennsylvania 15222-1512.

D.) DETERMINATION TO BE REVIEWED

6. Determination for which John P. Sabatina, Jr. seeks review is the final plan for the Pennsylvania House for the new 170th, 172nd, 173rd and 174th Legislative Districts and the entire 2012 Legislative Reapportionment Plan voted on June 8, 2012. Attached and marked as Exhibit "A" is a listing of the new 2012 final State Representative Legislative Plan for all Legislative Districts in Pennsylvania adopted by the Respondent, 2011 Legislative Reapportionment Commission. Attached and marked as Exhibit "B" is the map of the final plan of the 174th Legislative District. State Representative John P. Sabatina, Jr., also objects to the reapportionment of the 170th, 172nd and 173rd Legislative Districts, which he also contends are in violation of Article II, Section 16 of the Pennsylvania Constitution. Attached and marked as Exhibit "C" is the list of the ward and municipality splits in the June 8, 2012 Reapportionment Plan. Attached and marked as Exhibit "D" is a list of the Ward splits and Ward partnerships in each of the State Legislative Districts

under the new June 8, 2012 Legislative Reapportionment Plan for each State House of Representatives.

7. The determination for which the Petitioner, Thomas R. Caltagirone seeks review is the final plan for the Pennsylvania House for the 127th Legislative District and the entire June 8, 2012 Reapportionment Plan as it applies to all state legislative seats.

8. The Petitioner, Thomas R. Caltagirone incorporates by reference Exhibits "A", "C" and "D". Attached and marked as Exhibit "G" is the alternative Legislative plan for the 126th and 127th Legislative Districts as proposed by Representative Caltagirone.

E.) THE CONTROLLING CONSTITUTIONAL PROVISION

9. The controlling constitutional provision under the Pennsylvania Constitution is Article II, Section 16 of the Pennsylvania Constitution, which states as follows:

"The Commonwealth shall be divided into 50 Senatorial and 203 Representative Districts, which shall be composed of compact and contiguous territory, as nearly equal in population as practicable. Each Senatorial District shall elect one Senator, and each Representative District, one Representative. Unless absolutely necessary, no county, city, incorporated town, borough, township or ward shall be divided in forming either a Senatorial or Representative District." (Article II, Section 16 of the Pennsylvania Constitution).

F.) RELEVANT PROCEDURAL BACKGROUND

10. Pursuant to Section 17(a) of Article II of the Pennsylvania Constitution in 2011, the year following the Federal Decennial Census, the 2011 Legislative Reapportionment Commission was constituted for the purpose of reapportioning in the Commonwealth of Pennsylvania, the State Representative and State Senate Districts.

11. The first plan, which was adopted by the 2011 Legislative Reapportionment Commission was struck down after a challenge by the Pennsylvania Supreme Court in the decision of Holt v. 2011 The Legislative Reapportionment Commission, 38 A.3d 711 (Pa., 2012).

12. As a result, the 2011 Legislative Reapportionment Commission drafted a new plan, which is attached and marked as Exhibit "A". The said plan was approved by the 2011 Legislative Reapportionment Commission on June 8, 2012. The plan was approved 4 to 1 with Commission Member Costa being the dissenting vote. The preliminary plan had been objected to during the public hearings held in May of 2012, but the final plan came out after the public hearings and no one was allowed to speak at the June 8, 2012 hearing.

G.) GENERAL STATEMENT OF OBJECTIONS TO THE FINAL
REAPPORTIONMENT PLAN GENERALLY AND SPECIFICALLY AS TO THE NEW
174TH STATE LEGISLATIVE DISTRICT
AND THE NEW 127TH LEGISLATIVE DISTRICT

13. Both Petitioners, State Representative John P. Sabatina, Jr. and State Represent Thomas R. Caltagirone, object to the final Reapportionment Plan dated June 8, 2012 of the State Reapportionment Commission. The Petitioners contend that the new plan violates Article II, Section 16 of the Pennsylvania Constitution, particularly since there are numerous splits of wards, boroughs and townships forming the various State Representative Districts. Further, the districts are not as compact and contiguous as they should be. Both Petitioners note that is in direct violation of the constitutional language. There are numerous splits of wards in many of the Legislative Districts, as reflected in Exhibit "D", which is incorporated by reference. According to Exhibit "D", there are approximately 225 ward splits within various State Legislative Districts. Further, pursuant to Exhibit "C", approximately 68 municipalities are split in various State Legislative Districts. Also, as reflected in Exhibit "C", there are approximately 32 municipalities that not only are split, but also have split wards as well as split municipalities. In Philadelphia County, all districts except for the 200 Legislative District, have split wards. The said plan violates not only the aforementioned constitutional provision of Article II, Section 16 of the Pennsylvania Constitution, but also violates the standards set

forth in the aforementioned Holt v. 2011 Legislative Reapportionment Commission, 38 A.3d 711 (Pa. 2012) case.

14. Further, the Petitioner, State Representative John P. Sabatina, Jr., objects specifically to the change in division of the 174th Legislative District. State Representative John P. Sabatina, Jr. objects that he was not provided an opportunity for public comment since the new plan for the 174th Legislative District changed after the two public hearings. The 174th Legislative District changed and Representative Sabatina did not find out until the evening of Tuesday, June 5, 2012. He was, therefore, not given an opportunity for public comment. He did send in a written objection, but was told he could not further comment publicly. Attached, marked and incorporated by reference as Exhibit "E" is the written Objections of State Representative John P. Sabatina, Jr. to the 2011 Reapportionment Commission that he submitted to the Commission after June 5th when he found out the districts had changed, but before the June 8th final vote. This lack of opportunity to question the final plan would appear to violate Article II, Section 17 of the Pennsylvania Constitution since there was no opportunity to properly respond and object in public on the record for Representative Sabatina. Representative Sabatina timely objected with his written comments to the Commission.

15. Representative Sabatina also objects specifically not only to the redrawing of the 174th Legislative District, which is his district, but also to the redrawing of the 170th, 172nd and 173rd Legislative Districts.

16. As to his district, Representative Sabatina contends it is not compact since it contains four different wards, including portions of the 56th Ward, the 57th Ward, the 58th Ward and the 66th Ward. Further review of the new 174th Legislative District shows it is not compact and it splits at least four wards. A review of the split, as seen in Exhibit "A" shows it contains 28 of the 41 divisions in the 56th Ward, only two divisions of the 58th Ward, and further excludes the nearby 64th Ward and instead goes to the remote 66th Ward to put in 7 divisions on the 66th Ward. This is an extremely awkwardly drawn and non-compact district with multiple splitting of wards in direct violation of Article II, Section 16 of the Pennsylvania Constitution. The new 174th Legislative District no longer recognizes neighborhoods. It splits wards and neighborhoods.

17. Further, the new 172nd Legislative District also violates the aforementioned constitutional provisions. The 172nd District now contains portions of 8 wards. The 172nd District does not contain one complete ward. Another portion of the new 172nd ward cuts off the southeast part of the 56th ward and there are two tentacles reaching south, and east wrapping around

either side of the 177th District reaching all the way to the 41st Ward, splitting 8 wards and many neighborhoods along the way.

18. The new Districts 170 and 173 are also in violation of Article II, Section 16 of the Pennsylvania Constitution since they are in close proximity to the 172nd and 174th Wards. The new Legislative Districts 170 and 173 split the 66th Ward. Also, as noted above, the new 174th Legislative District also gained several divisions in the 66th Ward. These divisions compromise the compactness and integrity of the wards and the neighborhoods in Northeast Philadelphia.

19. Representative John P. Sabatina, therefore, objects generally to the Legislative plan, but also specifically to the redrafting of the 174th Legislative District, which is his district, and the 170th, 172nd and 174th Legislative Districts for the reasons set forth above.

20. State Representative John P. Sabatina proposes the following alternative. The maps that the Legislative Reapportionment Commission adopted as its preliminary plan on April 12, 2012 of the 170th, 172nd, 173rd, and 174th Districts are more compact, are composed of less wards, and split less neighborhoods than the plan that the Commission chose to adopt as the final plan on June 8, 2012. The 174th District contains three (3) wards in the preliminary plan and four (4) wards in the final plan. The 172nd District contains seven (7) wards in

the preliminary plan and eight (8) wards in the final plan. The 66th ward is divided by two State Representatives in the preliminary plan and three State Representatives in the final plan. The 57th ward had one State Representative in the preliminary plan and shares two State Representatives in the final plan. The 58th ward contained two neighborhoods of Rhawnhurst, Winchester Park, Academy Gardens, Pennypack Woods, Holme Circle, Upper Holmesburg, Mayfair, Brookhaven, Morrell Park and Crestmont Farms and others are split between more State Representatives than necessary. These maps and descriptions are attached and Exhibit "H".

21. State Representative Thomas R. Caltagirone also objects generally, as noted above, to the State Legislative Plan, but objects specifically to the new drafting of the 127th Legislative District. He worked with his assistant, Kurt Bellman, both in writing and by testifying before the Commission. His comments, both in writing and in testimony, are attached and marked as Exhibit "E" and incorporated by reference.

22. The 127th Legislative District, according to Exhibit "D", contains five wards, wards 6, 14, 15, 17 and 18 in the City of Reading, and splits these wards. It also adds another municipality, the Borough of Kenhorst. Therefore, not only does the new plan split wards, but it also splits municipalities by

including in the Borough of Kenhorst and portions of the City of Reading. This plan is in violation of Article II, Section 16 of the Pennsylvania Constitution since the district is not as compact as it should be and since it splits cities, towns and wards in forming this 127th Legislative District. Further, neighborhoods are split with no particular division. Further, the City of Reading is split between two Legislative Districts (the 126th and 127th Legislative Districts). This violates the aforementioned constitutional provisions. There is also an objection to the division of the 126th Legislative District. See Exhibit "F". State Representative Caltagirone suggests as an alternative plan for the 126th and 127th Districts the plan which is attached as Exhibit "G" and incorporated by reference.

23. State Representative Caltagirone also objects to the reduction of the Hispanic voters in the new 126th District (see Exhibit "F").

24. State Representative Thomas R. Caltagirone objects not only to the splitting and lack of compactness in his district, but also to the state-wide plan and its numerous splits of districts, wards and municipalities.

25. Both Petitioners respectfully contend that the current plan was not done with the aforementioned constitutional provisions in mind, but were done for political considerations. For instance, the 174th District was changed so radically that it

awkwardly encroaches into the 66th ward for the specific purpose to include the residence of the current State Representative of the 169th District. Political considerations have caused the extremely odd-shaped district with the numerous ward splits. This is contrary to the constitutional intent.

26. The Petitioners, State Representative John P. Sabatina, Jr. and State Representative Thomas Caltagirone, object to the redistricting of the 126th Legislative District, the 127th Legislative District, the 170th Legislative District, the 172nd Legislative District, the 173rd Legislative District and the 174th Legislative District and all other Legislative Districts for all the reasons set forth above. They contend it does not meet the constitutional requirements of Article II, Section 16 of the Pennsylvania Constitution and the aforementioned case of Holt v. The 2011 Legislative Reapportionment Commission, 38 A.3d 711 (Pa., 2012).

H.) RELIEF REQUESTED BY THE PETITIONERS

27. The Petitioners, State Representative John P. Sabatina, Jr. and State Representative Thomas Caltagirone, by their counsel, Samuel C. Stretton, Esquire, respectfully request this Honorable Court pursuant to Article II, Section 17(d) of the Pennsylvania Constitution remand the plan and direct the 2011 Legislative Reapportionment Commission to redo the plan of the Legislative Districts to comply with Article II, Section 16

of the Pennsylvania Constitution and this Honorable Court's decision in Holt v. The 2011 Legislative Reapportionment Commission, 38 A.3d 711 (Pa., 2012) and for all the reasons set forth in this Petition for Review. The Petitioners respectfully request oral argument.

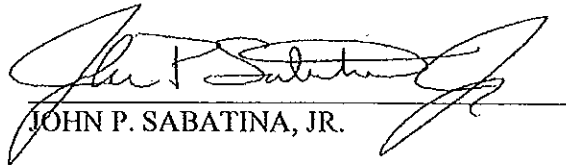
Respectfully submitted,



Samuel C. Stretton, Esquire
Attorney for Petitioners
301 S. High Street
P.O. Box 3231
West Chester, PA 19381
610-696-4243
Attorney I.D. No

VERIFICATION

I, John P. Sabatina, Jr. , hereby state that he is the Plaintiff in the foregoing and verifies that the statements made in the foregoing Petition for Review are true and correct to the best of his knowledge, information and belief; and that the undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.



JOHN P. SABATINA, JR.

VERIFICATION

I, State Representative Thomas R. Caltagirone, hereby verify that the facts set forth in the attached Petition for Review are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date: 7/3/12

Thomas R. Caltagirone
State Rep. Thomas R. Caltagirone

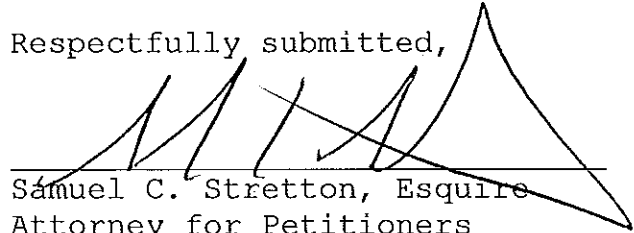
3. Judge Joseph A. Del Sole
Del Sole, Cavanaugh, Stroyd, LLC
200 1st Avenue, Suite 300
Pittsburgh, PA 15222-1512
Attorney for the Legislative
Reapportionment Commission
4. Shauna Christine Clemmer, Esquire
Pennsylvania Department of State
301 N. Office Building
Harrisburg, PA 17120
5. State Representative John P. Sabatina, Jr.
2217 Fuller Street
Philadelphia, PA 19152
6. State Representative Thomas R. Caltagirone
2521 Hill Road
Reading, PA 19606

Service by electronic mail to the following addresses:

7. coconnor@redistricting.state.pa.us
8. ccraykane@redistricting.state.pa.us
9. jdelsole@dscslaw.com
10. wstickman@dscslaw.com

July 5, 2012
Date

Respectfully submitted,



Samuel C. Stretton, Esquire
Attorney for Petitioners
301 S. High Street
P.O. Box 3231
West Chester, PA 19381
610-696-4243
Attorney I.D. No