

BEFORE THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

**THOMAS SCHIFFER,
RACHEL J. AMDUR,
JOAN TARKA,
LAWRENCE W. ABEL,
MARGARET G. MORSCHECK,
LAWRENCE J. CHRZAN,
SHIRLEY RESNICK,
SUSAN JEWETT, and
CARL DUZEN,**

Petitioners,

v.

**2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION,**

Respondent.

PETITION FOR REVIEW

**In The Nature Of An Appeal From The Revised Final Plan Of
The 2011 Legislative Reapportionment Commission**

Pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution and Pennsylvania Rule of Appellate Procedure 3321, the Petitioners, Thomas Schiffer, Rachel J. Amdur, Joan Tarka, Lawrence W. Abel, Margaret G. Morscheck, Lawrence J. Chrzan, Shirley Resnick, Susan Jewett and Carl Duzen (“Petitioners”), as individual voters in the Commonwealth of Pennsylvania, file this Petition for Review, seeking this Court’s review of the June 8, 2012 Revised Final Reapportionment Plan (“Revised Final Plan”) approved by the 2011 Legislative Reapportionment Commission (“Commission”). In support of the Petition, the Petitioners state as follows:

Statement Of Jurisdiction

1. The basis for the jurisdiction of this Court is Section 17(d) of Article 2 of the Pennsylvania Constitution and 42 Pa. C.S. 725(1), which provides that the Supreme Court 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 the Court's jurisdiction under Section 17(d) of Article II of the Constitution of Pennsylvania and is in the nature of a petition for review, pursuant to Rule of Appellate Procedure 3321.

Identity Of Parties Seeking Review

3. THOMAS SHIFFER is a registered voter in Delaware County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan. Mr. Shiffer is a resident of Haverford Township in Ward 1.

4. RACHEL J. AMDUR is a registered voter in Delaware County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan. Mrs. Amdur is a resident of Haverford Township in Ward 3.

5. JOAN TARKA is a registered voter in Delaware County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan. Mrs. Tarka is a resident of Haverford Township in Ward 4.

6. LAWRENCE W. ABEL is a registered voter in Delaware County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan. Mr. Abel is a resident of Haverford Township in Ward 5.

7. MARGARET G. MORSCHECK is a registered voter in Delaware County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan. Mrs. Morscheck is a resident of Haverford Township in Ward 6.

8. LAWRENCE J. CHRZAN is a registered voter in Delaware County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan. Mr. Chrzan is a resident of Haverford Township in Ward 7.

9. SUSAN JEWETT is a registered voter in Delaware County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan. Ms. Jewet is a resident of Haverford Township in Ward 8.

10. CARL DUZEN is a registered voter in Delaware County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan. Mr. Duzen is a resident of Haverford Township in Ward 8.

11. SHIRLEY RESNICK is a registered voter in Delaware County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan. Mrs. Resnick is a resident of Haverford Township in Ward 9.

Identity Of Respondent

12. The Respondent is the 2011 Legislative Reapportionment Commission.

13. Pursuant to Section 17(b) of Article 2 of the Pennsylvania Constitution, the Commission is composed of Senator Dominic Pileggi, the majority leader of the Senate; Senator Costa, the minority leader of the Senate; Representative Michael Turzai, the majority leader of the House of Representatives; Representative Frank Dermody, the minority leader of the House of Representatives; and the Honorable Stephen McEwen, the fifth member selected by

this Court after the other four Commission members were unable to agree on a fifth member. Judge McEwen served as Chair of the Commission.

14. Determination To Be Reviewed

15. The determination for which the Petitioners seek review is the Revised Final Plan of the Commission that was approved on June 8, 2012. A copy of the Revised Final Plan for the Pennsylvania House of Representatives and the map reflecting the Revised Final Plan for the Pennsylvania House of Representatives are attached as Exhibits A and B, respectively.

Controlling Constitutional Provision

16. Section 16 of Article 2 of the Constitution states:

The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. 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.**

Pa. Constit. Art. II, sect. 16 (emphasis supplied).

Relevant Procedural Background

17. Pursuant to Section 17(a) of Article 2 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 the Commonwealth.

18. Pursuant to Article 17(c) of Article 2 of the Pennsylvania Constitution, the Commission approved a preliminary reapportionment plan on October 31, 2011, by a 3 to 2 vote, with Commission Members Costa and Dermody dissenting. (“Preliminary Plan”).

19. The Preliminary Plan was not revealed to the Senate and House minority leader members of the Commission until one half-hour in advance of the time scheduled for

voting on the Preliminary Plan, and no meaningful opportunity for review of the Preliminary Plan was provided.

20. The result of said Plan was a split in Delaware County, Pennsylvania, of 16 municipalities. Haverford Township, Wards 1 and 9 specifically, were removed from the 166th District as a result of the Plan and placed in the 163rd District. Haverford Township has been entirely within the 166th District for decades and, as such, a split of this nature should be deemed unnecessary.

21. On or about November 14, 2011, under Resolution Number 1821-2011, the Township of Haverford Board of Commissioners submitted General Exceptions to the Preliminary Reapportionment Plan which ultimately became the Final Plan. Said Exceptions were attached to the initial Petition for Review filed on or about January 12, 2012 and are a matter of record. Said exceptions are incorporated herein by reference.

22. The Commission conducted public hearings on the Preliminary Plan on November 18 and November 23, 2011, and allowed for the submission of written comments and concerns.

23. On or about November 22, 2011, State Representative Greg Vitali provided the Respondent with a copy of an Alternate Proposed Plan which reduced the number of municipal splits in Delaware County from 16 to 9. Said Proposed Plan was attached to the initial Petition for Review filed on or about January 12, 2012 and is a matter of record. Said Proposed Plan is incorporated herein by reference.

24. During the course of the aforementioned public hearings, witnesses from across the Commonwealth testified as to the importance of not dividing political subdivisions unnecessarily. Despite said testimony, the Preliminary Plan was adopted and made Final on

December 12, 2012. Said Final Plan was attached to the initial Petition for Review filed on or about January 12, 2012 and is a matter of record. Said Final Plan is incorporated herein by reference.

25. Haverford Township was directly impacted by the reapportionment pursuant to the Final Plan. Specifically, Ward 1 and Ward 9 were removed from District 166, thus creating a municipal split. Said split was the basis for the initial Petition for Review filed on or about January 12, 2012.

26. Several parties, including Petitioners herein, filed appeals against the 2011 Final Plan. Pursuant to multiple Petitions for Review and subsequent Briefs thereon, including the afore-mentioned Appeal of Haverford Township residents and voters, oral argument was scheduled to take place before the Pennsylvania Supreme Court on January 23, 2012 regarding any challenges to the Final Reapportionment Plan.

27. In an Opinion dated January 25, 2012 and filed February 3, 2012, the Supreme Court declared the Final Plan “contrary to law” and remanded said Plan to the Legislative Reapportionment Commission for revision.

28. The Legislative Reapportionment Commission approved a Revised Preliminary Plan on April 12, 2012 (“Revised Preliminary Plan”).

29. The Revised Preliminary Plan, in addition to splitting Haverford Township by moving Wards 1 and 9 to the 163rd, also split Ward 2 in Haverford Township by moving one of the small precincts (Ward 2 Precinct 4) to the 163rd. Although this precinct was moved back to the 166th in the Revised Final Plan, the approval of this move shows the Respondent were not concerned with reducing the number of splits to only those that are absolutely necessary.

30. Reference to the number of splits below will refer to the number of cities, boroughs and townships that contain one or more splits.

31. The Commission conducted public hearings on the Revised Preliminary Plan on May 2 and May 7, 2012, and allowed for the submission of written comments and concerns. Representative Vitali appeared at the hearing and submitted additional written evidence of his Alternate Proposed Plan. As a whole Representative Vitali's Alternate Proposed Plan splits a total of 70 cities, boroughs and townships.

32. Said Alternate Proposed Plan reduced the number of township splits in Delaware County to 6. One of the townships spared from division under the Proposed Alternate Plan is Haverford Township. Said Revised Alternate Plan is attached hereto as Exhibit C and incorporated herein by reference.

33. The Revised Preliminary Plan, directly impacting Haverford Township in the manner set forth above, was adopted and made Final on June 8, 2012 ("Revised Final Plan"). Said Revised Final Plan splits 9 Municipalities in Delaware County. One of those political subdivisions, Haverford Township, remained split between the 163rd and 166th Districts.

Factual Issues Relevant To Appeal

34. The Pennsylvania Constitution provides that, unless "absolutely necessary," no county or municipality is to be divided when forming either a senatorial or representative district.

35. To achieve the goal of "one person, one vote," the average House district should contain approximately 62,573 residents.

36. Haverford Township has a population of 48,491, almost a legislative district in and of itself. Inexplicably, however, the Respondents have seen fit to split an almost

complete district into two as opposed to supplementing it with surrounding districts to create one unified district encompassing all of Haverford Township, per historical precedent. Said split is not necessary as evidenced by the alternate plan proposed by Rep. Greg Vitali (Exhibit C).

37. The Revised Final Plan divides 63 counties in the House plan. The previous (2001) plan split 49 counties in its House plan. In the concurring opinion of Albert v. 2001 Legislative Reapportionment Commission, Mr. Justice Saylor suggested that the 2001 plan represented “the outer limits of justifiable deference, at least in the absence of some specific explanation for why the constitutional prerequisites of compactness and respect for political subdivisions cannot be accommodated simultaneously with the maintenance of substantial equality of population and enforcement of voting interests of protected groups. Albert v. 2001 Legislative Reapportionment Commission, 790 A.2d 989,1000 (Pa. 2002). Mr. Justice Castille and Mr. Justice Eakin joined in the Concurring Opinion.

38. As a whole, the Revised Final Plan splits a total of 82 cities, boroughs, and townships.

39. As a whole, Representative Vitali’s alternative Proposed Plan splits a total of 70 cities, boroughs, and townships.

40. Of the 67 Counties in Pennsylvania, Delaware County possesses over ten percent (10%) of the 82 municipalities that are split in the Revised Final Plan.

41. Montgomery County contains eight (8) Municipalities that are split under the Revised Final Plan.

42. The two Counties of Delaware and Montgomery contain slightly over one fifth of all the municipalities that are split under the Revised Final Plan.

43. There is only one township in Delaware and Montgomery County with a population higher than ideal average House District. This township is Upper Darby Township with a population of 82,795.

44. Representative Vitali's alternative Proposed Plan reduces the number of municipalities that are split by 14%. It reduces the number of split municipalities in Delaware County to 6 and in Montgomery County to 3.

45. The Revised Final Plan contains a significant number of divisions among political subdivisions which could be limited as evidenced by Representative Vitali's alternative Proposed Plan. Exhibit C therefore demonstrates that the division of this Township is not "absolutely necessary".

Objections To The Final Reapportionment Plan

46. The Revised Final Plan is contrary to law because it fails to conform to the requirement of the Pennsylvania Constitution that, unless absolutely necessary, no county or municipality shall be divided in the creation of a senatorial or representative district.

47. The Final Plan contains multiple divisions among counties and municipalities that are not "absolutely necessary."

48. At no time did the Commission demonstrate that the divisions contained in the Revised Final Plan are absolutely necessary.

49. The alternative Proposed Plan from Representative Vitali contained population ranges from 60,074 to 64,957. The Revised Final Plan has population ranges from 60,110 to 65,036. Specifically, Legislative District 166 under the Revised Final Plan has a population of 61,878 while the Proposed Plan from Representative Vitali has a population of 63,628. Representative Vitali's Proposed Plan maintains populations in the Legislative Districts

that are well within and similar to the ranges in the Revised Final Plan but cuts the number of municipalities that are split in Delaware County by 1/3.

50. The Commission failed to demonstrate that the division of Haverford Township required under the Revised Final Plan was absolutely necessary.

51. The Commission failed to address, consider or adjust the Revised Final Plan to limit the division of political subdivisions to those that were absolutely necessary.

52. The Commission failed to address, consider or adjust the Revised Final Plan in accordance with requests of the public and generally ignored the Alternative Plan which demonstrated that numerous divisions among counties and municipalities contained in the Revised Final Plan are not necessary and could have been eliminated.

53. The Commission's plan exceeds the number of County divisions and political subdivision splits that are acceptable without a specific explanation for why the constitutional prerequisites of compactness and respect for political subdivisions cannot be accomplished simultaneously with the maintenance of substantial equality of population and enforcement of voting interests of protected groups in the manner prescribed by federal law.

Relief Requested

54. For the foregoing reasons, the Petitioners ask this Court to determine that the Revised Final Plan is contrary to law under Section 17(d) of Article II of the Pennsylvania Constitution and to remand this matter to the Commission with direction to make the following revisions to the Revised Final Plan:

- a) Inclusion of all of Haverford Township within the same representative district, District 166.

47. Alternatively Petitioners ask this Court to determine that the Revised Final Plan is contrary to law under Section 17(d) of Article II of the Pennsylvania Constitution and to

remand this matter to the Commission to further reduce the number of splits within the 203 Districts to an amount that is not contrary to law.

Respectfully submitted,

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