

BEFORE THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

JOSH SHAPIRO, LESLIE RICHARDS,	:	
DAYLIN LEACH, SAMUEL ADENBAUM,	:	
IRA TACKEL, MARCEL GROEN, HARVEY	:	
GLICKMAN, and DAVID DORMONT	:	
	:	No.
Petitioners,	:	
	:	
v.	:	
	:	
2011 LEGISLATIVE REAPPORTIONMENT	:	
COMMISSION,	:	
	:	
Respondent.	:	

PETITION FOR REVIEW

**In The Nature Of An Appeal From The June 8, 2012 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—Montgomery County Commissioners Josh Shapiro and Leslie Richards, State Senator Daylin Leach, Lower Merion Township Treasurer Samuel Adenbaum, and Ira Tackel, President of the Upper Dublin Township Board of Commissioners, in both their capacities as elected officials and as individual voters in the Commonwealth of Pennsylvania, and petitioners Marcel Groen, Harvey Glickman, and David Dormont, registered voters in Montgomery County in the Commonwealth of Pennsylvania—file this Petition for Review, seeking this Court’s review of the June 8, 2012 final reapportionment plan (“2012 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 appellate jurisdiction and is in the nature of a petition for review, pursuant to Rule of Appellate Procedure 3321.

Identity Of Parties Seeking Review

3. Josh Shapiro is the elected Chairman of the Montgomery County Commissioners and a registered voter in Abington Township, Montgomery County, Pennsylvania and brings this Petition as an elected official and an individual registered voter who is aggrieved by the Final Plan.

4. Leslie Richards is the elected Vice Chair of the Montgomery County Commissioners and a registered voter in Whitemarsh Township, Montgomery County, Pennsylvania and brings this Petition as an elected official and an individual registered voter who is aggrieved by the Final Plan.

5. Daylin Leach is an elected member of the Pennsylvania State Senate and a registered voter in Upper Merion Township, Montgomery County, Pennsylvania and brings this Petition as an elected official and an individual registered voter who is aggrieved by the Final Plan.

6. Samuel Adenbaum is the elected Treasurer of and a registered voter in Lower Merion Township, Montgomery County, Pennsylvania, and brings this Petition as an elected official and an individual registered voter who is aggrieved by the Final Plan.

7. Ira Tackel is the elected President of the Board of Commissioners of and a registered voter in Upper Dublin Township, Montgomery County, Pennsylvania, and brings this Petition as an elected official and an individual registered voter who is aggrieved by the Final Plan.

8. Marcel Groen is a registered voter in Abington Township, Montgomery County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan.

9. Harvey Glickman is a registered voter in the Ninth Ward of Lower Merion Township, Montgomery County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan.

10. David Dormont is a registered voter in the Ninth Ward of Lower Merion Township, Montgomery County, Pennsylvania and brings this Petition as an individual registered voter who is aggrieved by the Final Plan.

Identity Of Respondent

11. The Respondent is the 2011 Legislative Reapportionment Commission.

12. 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 Jay 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.

Determination To Be Reviewed

13. The determination for which the Petitioners seek review is the 2012 Final Plan of the Commission that was approved on June 8, 2012. Copies of the Final Plan and the Map reflecting the Final Plan for the Pennsylvania Senate are attached as Exhibits A and B to this Petition for Review, and copies of the Final Plan and Map reflecting the Final Plan for the Pennsylvania House of Representatives are attached as Exhibits C and D.

Controlling Constitutional Provision

14. 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. Const. Art. II, sect. 16 (emphasis supplied).

Relevant Procedural Background

15. 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.

16. 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. (“2011 Preliminary Plan”).

17. 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.

18. During the course of the hearings, witnesses from across the Commonwealth testified as to the importance of not dividing political subdivisions unnecessarily.

19. On December 12, 2011, the Commission approved a Final Plan with a 4 to 1 vote ("2011 Final Plan"). The 2011 Final Plan split a significant number of political subdivisions throughout the state and generally did not correct the issues raised by those who testified at the public hearings.

20. Several parties filed appeals against the 2011 Final Plan. On January 25, 2012, this Court ruled the 2011 Final Plan was contrary to law.

21. On February 3, 2012, this Court issued an 87 page majority opinion that emphasized the importance of each of the co-existing mandates of Article II, Section 16 of the Pennsylvania Constitution. This Court explained that the 2011 Final Plan was contrary to law because plans had been presented to the Commission that divided significantly fewer political subdivisions. This Court also noted that several Senatorial Districts were obviously non-compact.

22. This Court remanded the 2011 Final Plan to the Commission and ordered the Commission to draft a new plan consistent with its opinion. This Court also noted that the Commission should pay attention to historically unified subdivisions, such as county seats.

23. The Commission scheduled a meeting on February 22, 2012, to consider a new preliminary plan. The Commission conducted no business at the meeting and apparently no Commission member was prepared to submit a preliminary plan.

24. After the February 22, 2012 meeting was adjourned, the Commission did not hold any meetings to solicit input regarding the issues to be addressed in its new preliminary plan.

25. The Commission scheduled a meeting for April 12, 2012 for the purpose of adopting a preliminary plan.

26. At the April 12, 2012 meeting, Senators Costa and Pileggi each introduced a proposed preliminary plan. The Commission adopted the Chairman's plan for both the Senate and the House as the Preliminary Plan by a 4 to 1 vote ("2012 Preliminary Plan").

27. The Commission conducted public hearings on the 2012 Preliminary Plan on May 2 and May 7, 2012, and allowed for the submission of written comments and concerns.

28. During the course of the hearings, witnesses from across the Commonwealth testified as to the importance of not dividing political subdivisions unnecessarily. The Commission was also presented with several alternative plans that contained significantly fewer divisions of counties and municipalities.

29. Petitioner Marcel Groen testified before the Commission on May 2, and provided written comments. Groen argued that the 2012 Preliminary Plan was unconstitutional because Montgomery County, which has approximately 800,000 residents, would be divided into six separate Senatorial districts, with not one district resting exclusively within the state's third largest county. The 2011 Final Plan, which this Court had declared unconstitutional, had also created six such split districts. In fact, he testified, two of the six districts in the 2012 Preliminary Plan would stretch across three different counties.

30. Groen further explained that based on the population of the Commonwealth as a whole, Montgomery County should be apportioned three whole Senate

seats, and a portion of a fourth, and noted that many other counties such as Berks, Bucks, Chester, and Delaware, had suffered from such excessive and inexplicable fracturing.

31. As to the proposed State House map, Groen noted that only three of the nineteen proposed House districts within Montgomery County followed the Constitutional instruction to avoid splitting townships or counties, with three different districts straddling between Montgomery and Philadelphia Counties and two shared between Montgomery and Chester Counties, clearly for partisan reasons.

32. Groen further explained to the Commission that splits to particular Montgomery County townships with significant Democratic-voting populations were particularly inexplicable. Lower Merion, large enough for one intact State House seat (57,825 residents), was split into four separate districts. With 25,569 residents, Upper Dublin could form half of one State House district on its own; instead, it constituted a fraction of three separate districts under the 2012 Preliminary Plan. Similarly, Groen testified, Pottstown Borough had been divided between two House seats, with voters in certain wards assigned into different House districts, despite only having 22,377 residents.

33. Petitioner Daylin Leach, a member of the State Senate, also testified before the Commission as to the blatant partisan gerrymandering he saw in the 2012 Preliminary Plan, which he believed did damage to the many communities across the state which had been separated and torn asunder for no legitimate purpose, depriving them of equal representation in Harrisburg. Leach called for the Commission to return with a map that served the interests of neither political party but rather the Commonwealth as a whole.

34. On June 8, 2012, the Commission held a public meeting to vote on a final plan. At the meeting, Senator Pileggi proposed a plan, titled the “Senate Republican Caucus Proposed Final Plan”.

35. Before the Commission voted on Senator Pileggi’s plan, Senator Costa presented a proposed amendment to the plan which provided the Commission with an opportunity to reduce the number of county and municipal splits, while meeting the other mandatory requirements of the Constitution (“Costa Amendment”). The Commission voted against the Costa Amendment by a 3 to 2 vote.

36. With a 4 to 1 vote, the Commission approved the Senate Republican Caucus Proposed Final Plan as the 2012 Final Plan and the proposed plan offered by the House Republican Caucus. The Commission did not address whether it could remove various splits of political subdivisions in response to the evidence which had been presented.

37. The 2012 Final Plan continues to split Montgomery County into six State Senate districts, none of which is wholly contained within Montgomery County, rather than the three intact districts plus a fraction of a fourth justified by its population. In three of the six districts, Montgomery County residents are a minority.

38. There is no legitimate reason for these Senate districts in every instance to straddle county lines; the Commission’s decision to do so can only be explained based on the desire to create safer districts in which to elect Republicans by packing likely Democratic voters as tightly and carefully as possible.

39. With regards to the House of Representatives, the 2012 Final Plan contains nineteen splits of Montgomery County townships, when only twelve are mathematically necessary. In addition to the Lower Merion four-way split and Pottstown and Upper Dublin splits

previously mentioned, and maintained in the 2012 Final Plan, the following townships are unnecessarily split: Lower Gwynedd Township, Plymouth Township, Upper Providence Township, West Norriton Township, and Whitpain Township.

40. Furthermore, under the 2012 Final Plan, individual wards are unnecessarily split in Lower Merion Township, Plymouth Township, Pottstown Borough, Upper Dublin Township, Upper Providence Township, and West Norriton Township.

41. There is no legitimate reason for these township splits; they can only be explained based on the desire to create safer districts in which to elect Republicans in Montgomery and Delaware Counties by packing likely Democratic voters as tightly and carefully as possible.

Factual Issues Relevant To Appeal

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

43. To achieve the goal of “one person, one vote,” the average senatorial district should contain approximately 254,000 residents and the average House district should contain approximately 65,000 residents.

44. Montgomery County has 799,874 residents according to the 2010 Census. In order to comply with the Pennsylvania Constitution, it should therefore have three intact State Senate districts and a fraction of a fourth. Instead, it has six Senate districts, none of which are wholly contained within Montgomery County.

45. Eight separate Montgomery County municipalities have unnecessary splits in their House districts; in six, these splits not only divide wards, but also fragment divisions within wards within the municipality.

46. The Final Plan contains a significant number of divisions among political subdivisions which, as the Costa Amendment and other evidence presented to the Commission indicate, contain unnecessary divisions of political subdivisions.

47. The Costa Amendment shows that, as a whole, the 2012 Final Plan contains a significant amount of unnecessary county divisions, including unnecessary divisions of Montgomery County.

Objections To The Final Reapportionment Plan

48. The 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.

49. The Constitutional requirement that political subdivisions not be subject to division unless “absolutely necessary” is mandatory.

50. At no time did the Commission develop versions of a redistricting plan that attempted to justify the splits of political subdivisions in the Final Plan or to demonstrate that no splits could be eliminated.

51. The 2012 Final Plan contains multiple divisions among counties and municipalities that are not “absolutely necessary.”

52. At no time did the Commission demonstrate that the divisions contained in the 2012 Final Plan are absolutely necessary.

53. The Commission failed to address, consider or adjust the Final Plan in accordance with requests of the public and generally failed to undergo the types of considerations mandated by the Pennsylvania Constitution concerning splits of political subdivisions. As reflected in the Costa Amendment and other plans submitted to the Commission, such considerations were readily achievable. Thus, numerous divisions among counties and municipalities contained in the 2012 Final Plan are not absolutely necessary and could have been eliminated.

54. Montgomery County should have been divided into three State Senate districts, plus a fraction of a fourth, rather than the six districts it has been apportioned, none of which is contained wholly within the County.

55. None of the Montgomery County township splits as to House districts are justified, and in particular the splicing of Lower Merion, Upper Dublin, and Pottstown into multiple districts cannot be explained other than for partisan reasons.

56. As residents of Lower Merion Township, Ward 9, petitioners Glickman and Dormont are particularly concerned about the 2012 Final Plan regarding the Pennsylvania House in two respects. Primarily, they fear that the four-way split of Lower Merion Township will yield divided representation and cause confusion among voters unclear as to who represents them. Moreover, as residents of Ward 9, they are particularly concerned because their House district has been drawn with a majority of voters from Philadelphia County.

57. As a resident of Lower Merion Township as well as an elected official, Ward 13, petitioner Adenbaum shares the concerns of Glickman and Dormont regarding the four-way split of Lower Merion Township, which are further magnified for Adenbaum and his fellow Ward 13 residents because the ward's three divisions are themselves divided into two

separate House districts under the 2012 Final Plan. Such unnecessary division and assured voter confusion cannot be justified or explained but for the expected partisan advantage such careful tailoring will yield in other districts.

58. As a resident of Upper Dublin Township and President of the Township's Board of Commissioners, petitioner Tackel is deeply concerned about voter confusion given that township residents are divided unnecessarily and haphazardly into three different House districts, rather than constitute an intact half of one district as its population of 25,569 would suggest, which he does not believe can be explained but for the expected partisan advantages the map is designed to yield.

Relief Requested

59. For the foregoing reasons, the Petitioners ask this Court to determine that the 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 Final Plan:

- a) Modifications to incorporate the adjustments set forth in the Costa Amendment or to eliminate at least as many unnecessary splits of political subdivisions within Montgomery County as set forth in the Costa Amendment, while meeting the other mandated constitutional requirements;
- b) Retain the use of a special master to develop a plan that conforms to the constitutional requirements;
- c) Remand to the Commission to develop a plan that conforms to the constitutional requirements;
- d) Prepare any other revisions of 2012 the Final Plan that are required to conform to the Constitution; and

- e) Provide whatever other relief is necessary and proper to allow for the development of a final plan that meets the requirements of the Constitution.

Respectfully submitted,

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Dated: July 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Petition for Review was served this 9th day of July, 2012, by electronic and first class mail on the following:

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