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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. _____ MM 2012

DENNIS J. BAYLOR,
Petitioner.

vs.

COMMONWEALTH OF PENNSYLVANIA
2011 LEGISLATIVE REAPPORTIONMENT COMMISSION

Respondent.

Petition for Review from the Final Legislative Reapportionment Plan
of the 2011 Reapportionment Commission Filed with
the Secretary of the Commonwealth on December 12 , 2011

Brief of Petitioner

Dennis J. Baylor,
Petitioner
2564 Moutain Road
Hamburg, Pa. 19526

(610) 781 – 8746

dennisbaylor@gmail.com

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I

STATEMENT OF JURISDICTION

The Supreme Court of Pennsylvania has jurisdiction pursuant to Article 2, §17(d) of the Pennsylvania Constitution, which provides that:

Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission to reapportion the Commonwealth in a manner not inconsistent with such order.

II

STATEMENT OF SCOPE OF REVIEW AND STANDARD OF REVIEW

This Honorable Court's scope of review with regard to questions of law is plenary.

Annenberg v. Commonwealth Of Pennsylvania, 562 Pa.570, 757 A.2d 333 (1998).

The standard of review is found in the Constitution of this Commonwealth which directs this Honorable Court to entertain appeals from any aggrieved person within thirty (30) days of the filing of the Final Plan. Article 2, §17(d). If the Petitioner establishes that the Final Plan is contrary to law, this Honorable Court shall issue an Order remanding the Plan to the Commission and directing the Commission to reapportion the Commonwealth in a manner not inconsistent with such Order. *Id.* To prevail in a challenge to the Final Reapportionment Plan, Petitioner has the burden of showing not that there exists an alternative Plan which is preferable or better, but rather that the final Plan filed by the Commission fails to meet constitutional requirements. In Re 1991 Pennsylvania Legislative Reapportionment Commission, 530 Pa. 335, 609 A.2d 132 (1992), cert. denied, 506 U.S. 819 (1992).

III

ORDER OR OTHER DETERMINATION IN QUESTION

The determination in question is the Final Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission filed with the Secretary of the Commonwealth on December 12, 2011.

IV

STATEMENT OF THE QUESTIONS INVOLVED

1. **DOES THE CONSTANT CHANGING OF PETITIONER'S LEGISLATIVE DISTRICT, THEREBY NULLIFYING HIS LOCALITY'S LEGISLATIVE CHOICES, OFFEND THE COMMONWEALTH CONSTITUTION'S PROSCRIPTION AGAINST INTERFERENCE WITH THE FREE EXERCISE OF SUFFRAGE?**

Suggested Answer : Yes.

2. **DOES THE 2011 FINAL REAPPORTIONMENT PLAN UNNECESSARILY DIVIDE COUNTIES AND IGNORE THE CONSTITUTIONAL MANDATES OF COMPACTNESS AND CONTIGUITY? FURTHER, HAS THE EXTENT OF THE FINAL PLAN FRACTURED TRADITIONAL SUBORDINATE STRUCTURES OF GOVERNMENT MATERIALLY ALTERED THE FORM OF OUR STATE GOVERNMENT?**

Suggested Answer : Yes.

3. **WAS THE FINAL PLAN PROMULGATED FOLLOWING PROCEDURES, AND USING DATA THAT VIOLATE ARTICLE 2, §17 OF PENNSYLVANIA'S CONSTITUTION, ALONG WITH THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION?**

Suggested Answer : Yes.

STATEMENT OF THE CASE

On December 12, 2011, the 2011 Pennsylvania Legislative Reapportionment Commission filed with the Secretary of the Commonwealth its Final Plan to reapportion the Pennsylvania General Assembly following the 2010 United States Census. On January 11, 2012, Petitioner filed a Petition for Review from the Final Reapportionment Plan.

Petitioner, Dennis Baylor, is an aggrieved adult individual, and presented testimony to the Legislative Reapportionment Commission in public hearings November 18, 2011 - opposing what was at the time - the Preliminary Plan. Since the group, "Occupy Harrisburg" disrupted the hearings, petitioner submitted his objections in written form, R.R. 1a-9a. The Commission has failed to act on any of the material submitted.

Petitioner is a lifelong resident of Pennsylvania, and has spent the last forty years living in Tilden Township, Berks County, from 1971 the first year he could vote. Then, as in 1981, 1991, 2001, 2011 he has had the reapportionment process supplant his right of suffrage, and given a fresh incumbent legislator. On the House side of the General Assembly, the petitioner has never been represented by a resident of his county - that is true on the Senate side as well.

Although Berks county has experienced 10.1% growth since the 2000 census, and now has a population of 411,442 persons, its legislative clout has remained stagnant for decades. While such a population would suggest there should be over six (6.58) R.R. 12a Representatives in the General Assembly voicing their concerns about Berks County issues, there are four (4) House Members with their districts fully in the county, and five (5) R.R.3a fractional members.

In the Final Plan the petitioner would be a resident of the 124th House District, which includes a small part of Carbon county and a large part of Schuylkill county. A situation much like that in The "No Party" Party of Pennsylvania v. Cortes et.al., -3 MAP 2009, (dismissed as moot), probably will re-occur because Rep. Reichly has been elected to Lehigh county's bench, and petitioner has been elected Township Auditor as a 'No Party' Party candidate, having received 20% of the vote, in a nine way race.

The final concerns the petitioner raised with the Legislative Reapportionment Commission were procedural ones, questioning whether the Final Plan was tendered promptly and in "good faith". "The General Assembly of Pennsylvania is entitled to an opportunity to enact reapportionment legislation pursuant to the recent "*Reynolds*" cases and to our interpretation here of pertinent provisions of the

Pennsylvania Constitution. Since the Legislature is intimately acquainted with the characteristics of Pennsylvania and is primarily responsible for

constitutional apportionment, action by that body, taken promptly and in good faith, is more likely to achieve a workable, constitutionally acceptable result than an apportionment following the suggested plan of the district court.'

BUTCHER v. BLOOM 415 Pa. 438 (1964).

The foregoing concerns arose from looking at the Minutes and Agenda of Legislative Reapportionment Commission gatherings, as well as the report of the Investigative Grand Jury into Legislative Corruption which resulted in criminal charges being filed against 2001 Legislative Commissioner John Perzel, to which he plead guilty. In particular, the testimony of commission staffer, Steve Dull R.R. 4a-6a, raises grave doubt if the 2001 apportionment was based on a tainted database, with that corruption of the data being perpetuated in the 2011 Final Plan.

VI

ARGUMENT

ISSUE 1 DOES THE CONSTANT CHANGING OF PETITIONER'S LEGISLATIVE DISTRICT, THEREBY NULLIFYING HIS LOCALE'S LEGISLATIVE CHOICES, OFFEND THE COMMONWEALTH CONSTITUTION'S PROSCRIPTION AGAINST INTERFERENCE WITH THE FREE EXERCISE OF SUFFRAGE?

According to the National Conference of State Legislatures, (see <http://www.ncsl.org/default.aspx?tabid=16506>) an incumbent in the Pennsylvania General Assembly will be reelected 95% to 98% of the time. By consistently being reapportioned into a new district, with a new incumbent, every reapportionment cycle , there is very little incentive to seek public office or to vote. We went from residents of the 187th, to being residents of the 124th, to the 125th, and now back to the 124th. When someone by decree tells you who your "elected" official will be, your vote has been debased. I understand it must happen occasionally to make the process work, but to have it happen every reapportionment cheapens our votes.

There is no rhyme or reason that Tilden Township has been singled out thusly. Plainly put, it is invidious discrimination.

To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote.

Reynolds v. Sims, 377 U.S. 533 (1964)

ISSUE 2. DOES THE 2011 FINAL REAPPORTIONMENT PLAN UNNECESSARILY DIVIDE COUNTIES AND IGNORE THE CONSTITUTIONAL MANDATES OF COMPACTNESS AND CONTIGUITY? FURTHER, HAS THE EXTENT THE FINAL PLAN FRACTURES TRADITIONAL SUBORDINATE STRUCTURES OF GOVERNMENT MATERIALLY ALTERED THE FORM OF OUR STATE GOVERNMENT?

Counties are the oldest known sub-divisions of government. William Blackstone in his *Commentaries on the Laws of England*, Volume 1, page 113 credits King Alfred with formalizing their introduction into England, but goes on to say that they were known to exist centuries earlier, probably coming from ancient Germany. Owing to William Penn's English origins, Pennsylvania has used the County, as a fundamental organizational building block from the Commonwealth's founding to present. In fact, County Government is the only sub-division specifically detailed in Pennsylvania's Constitution Article IX § 4. Clearly the framers of the Commonwealth's Constitution intended that this essential organ of government not be fractured, even in the era following Baker et al v. Carr et al 369 U.S. 186 (1962) , because at the Constitutional Convention were the language of Article 2, § 17 was inserted, they also inserted the requirements for districts created thereunder, Article 2, § 16, which states;

Legislative Districts

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.

“Unless absolutely necessary” is free from all ambiguity. Similarly when a reapportionment plan violates the boundary of adjacent county once, there is faint hope of making an argument for an exception but twice is just absurd. Berks county’s boundaries are violated five (5) times. Four of those five times are with two counties, Lehigh county shares two districts with Berks, the 187th and 134th . And Lancaster county shares two districts with Berks, the 128th and the 129th R.R. 3a.

have the burden of establishing that Final Plan filed by the Commission fails to meet constitutional requirements, and not that there exists an alternative plan which is better. In Re 1991 Pennsylvania Reapportionment Commission, 530 Pa. 335,609 A.2d 132 (1992) cert. den’d, 506 U.S. 819 (1992). But petitioner has included a framework for reapportionment based on Intermediate Units and School Districts in his Reproduced Record starting at R.R.14a, the concept has been advanced in two House State Government Committee meetings on the subject of reapportionment. Its main weakness is that it is highly logical. School Districts, since their inception by the School Jointure act, have avoided splitting counties and other political sub-divisions as a practical matter , because of complicating the levying and collection of taxes. At the same time, school districts are compact and contiguous, because of the practical matter of transporting students. As a public policy issue, the suggestion has much to recommend it here as

well, schools collect more taxes than any division of government, save the federal government, and having cognizable representation would go a long way to fitting this increasingly important creature of state government, into the scheme of modern government.

The lack of objective standards for the compactness of Legislative Districts is a complete mystery to the petitioner. In geometry, (which comes from 'to measure the earth') the isoperimetric quotient is the method used to quantify compactness, it in turn is the area bound, divided by the perimeter of the shape. A circle is generally accepted as the most compact shape, since a radius from its center fully circumscribes the shape.

ISSUE 3 **WAS THE FINAL PLAN PROMULGATED FOLLOWING PROCEDURES, AND USING DATA THAT VIOLATE ARTICLE 2,§17 OF PENNSYLVANIA'S CONSTITUTION, ALONG WITH THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSITUTION?**

The proposed plan is advanced in bad faith, see the attached Transcript of the 28th Statewide Investigating Grand Jury Presentment No. 2, part 2 pages 69 through 71, Exhibit "B" http://www.attorneygeneral.gov/uploadedFiles/Press/GJ-PresentmentNo2_page64-119.pdf R.R.4a-R.R.6a. The findings of fact concerning Steve Dull regarding the meeting between Rep. Perzel , his staff and GCR & Associates show the 2001 plan was ready to go as soon as the U.S. Census data was officially released, probably in March or April 2001. Although there is clearly stalling on the part of the Commission

(LRC), in the instance of the 2001 LRC they had their Public meeting on the Preliminary Reapportionment Plan October 25, 2001 , and Nominating Petitions circulated the end of February 2002. This reapportionment the Commission is a month behind that in 2001 and Nominating Petitions circulate January 24, 2012. We don't have ambush elections in America.

Also, the proposed plan creates two open House seats in Berks.

The proposed plan is founded on a tainted database, which, in turn, is the fruit of criminal activity in direct contravention of Art. II, Sec. 17 of the Commonwealth Constitution which requires that non-partisan U.S. Decennial Census data be used to apportion the commonwealth. See Exhibit "B" page 69, R.R. 4a-6a "Dull testified that before the meeting with GCR, Perzel, Preski and Tomaselli explained to him that they identified GCR as an entity to help them win more seats in the legislature and retain Republican majority." Since Rep. Prezel narrowly won reelection in 2000 (By about 100 votes once absentee ballots were counted) he didn't hesitate to interject partisan profiling in the 2001 plan, as evidenced by his post-2001 district . See Exhibit "D" R.R. 8a. According to Exhibit "B" Rep. Prezel's staff interacted extensively with GCR and other vendors to make partisan voter data a web based database, thereby making it perpetual.

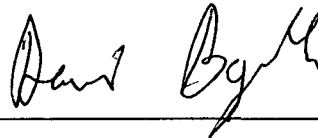
In Pennsylvania, there are, at present, 8,168,734 persons registered to vote, of which there are 4,130,537 Democrats, 3,030,925 Republicans, and 1,007,272 non-partisan House, and the Governor is a Republican.

CONCLUSION

The 2011 Legislative Reapportionment Commission has failed to meet the overriding requirement of providing all qualified electors with an equally effective vote under the Final Plan. The Final Plan contrary to Commonwealth's Constitution and the Equal Protection Clause of the United States Constitution, and should be remanded to the Commission for corrective action.

Respectfully Submitted

By:



Dennis Baylor
Petitioner
2654 Mountain Road
Hamburg, Pa. 19526
(610) 781 - 8746

Dated: January 11, 2012