

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SENATOR JAY COSTA, SENATOR LAWRENCE M. FARNESE, JR., SENATOR CHRISTINE M. TARTAGLIONE, SENATOR SHIRLEY M. KITCHEN, SENATOR LeANNA M. WASHINGTON, SENATOR MICHAEL J. STACK, SENATOR VINCENT J. HUGHES, SENATOR ANTHONY H. WILLIAMS, SENATOR JUDITH L. SCHWANK, SENATOR JOHN T. YUDICHAK, SENATOR DAYLIN LEACH, SENATOR LISA M. BOSCOLA, SENATOR ANDREW E. DINNIMAN, SENATOR JOHN P. BLAKE, SENATOR RICHARD A. KASUNIC, SENATOR JOHN N. WOZNIAK, SENATOR JIM FERLO, SENATOR WAYNE D. FONTANA, SENATOR JAMES R. BREWSTER, and SENATOR TIMOTHY J. SOLOBAY,

Petitioners,

v.

2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION,

Respondent.

MOTION TO STRIKE THE COMMISSION'S "PRELIMINARY OBJECTION"
TO PETITIONERS' PETITION FOR REVIEW

Clifford B. Levine
Pa. Id. No. 33507
Alice B. Mitinger
Pa. Id. No. 56781
Daniel J. Colaizzi
Pa. Id. No. 308765

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On Behalf of Petitioners, Senator Jay Costa, et al.

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

SENATOR JAY COSTA, SENATOR LAWRENCE M. FARNESE, JR., SENATOR CHRISTINE M. TARTAGLIONE, SENATOR SHIRLEY M. KITCHEN, SENATOR LeANNA M. WASHINGTON, SENATOR MICHAEL J. STACK, SENATOR VINCENT J. HUGHES, SENATOR ANTHONY H. WILLIAMS, SENATOR JUDITH L. SCHWANK, SENATOR JOHN T. YUDICHAK, SENATOR DAYLIN LEACH, SENATOR LISA M. BOSCOLA, SENATOR ANDREW E. DINNIMAN, SENATOR JOHN P. BLAKE, SENATOR RICHARD A. KASUNIC, SENATOR JOHN N. WOZNIAK, SENATOR JIM FERLO, SENATOR WAYNE D. FONTANA, SENATOR JAMES R. BREWSTER, and SENATOR TIMOTHY J. SOLOBAY,

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The above-captioned Petitioners (“Petitioners”), including Senator Jay Costa, in his capacity as a member of the 2011 Pennsylvania Legislative Reapportionment Commission (the “Commission”), and all Petitioners in their capacities as elected officials and as individual voters in the Commonwealth of Pennsylvania, file this Motion to Strike the Commission’s Preliminary Objection to their Petition for Review. In support of this motion, the Petitioners state as follows:

Petitioners' Appeal Of The 2011 Reapportionment

1. Petitioners brought their Petition for Review of the 2011 reapportionment pursuant to Section 17(d), Article II of the Pennsylvania Constitution (“Section 17(d)”), which directs that this Court is to hear *appeals* of reapportionment plans, and 42 Pa. C.S. § 725(1), which describes this Court’s jurisdiction over *appeals* from final orders of certain constitutional and judicial agencies, including the Legislative Reapportionment Commission.

2. Pennsylvania Rule of Appellate Procedure 3321, titled “*Appeal* from Legislative Reapportionment Commission,” provides: “*appeals* under Section 17(d) of Article II of the Constitution of Pennsylvania shall be governed by Chapter 15 (judicial review of governmental determinations).” Pa. R.A.P. 3321 (emphasis added).

3. Rule of Appellate Procedure 1516 confirms that this Court exercises its *appellate* jurisdiction upon review of a Section 17(d) appeal. *See* Pa. R.A.P. 1516(a) (listing “appeals from decisions of the Legislative Reapportionment Commission” as one of the instances when a responsive pleading may be filed despite the Court’s exercise of *appellate jurisdiction*).

4. Given the clear language of the Constitution and the Rules of Appellate Procedure, a petition for review of a determination of the Legislative Reapportionment Commission is an appeal within this Court’s appellate jurisdiction.

5. The appropriate mechanism for initiating this Court’s review, pursuant to Rule 3321, is a petition for review directed to the Court’s appellate jurisdiction, pursuant to Chapter 15 of the Rules of Appellate Procedure.

6. The form prescribed for an appellate jurisdiction petition for review is set forth in Rule 1513(d), titled “Content of appellate jurisdiction petition for review.” After listing the requirements for a petition, the rule states, “**No notice to plead or verification is necessary.**” Pa. R.A.P. 1513(d) (emphasis supplied).

The “Preliminary Objection” Is Premised On An Inapplicable Rule

7. With its Preliminary Objection, the nature of a motion to dismiss the Petition for Review at issue here, the Commission asks this Court to dismiss the Petition, claiming that Rule of Appellate Procedure 1513(e) requires the submission of a verification.

8. Rule 1513(e), titled “Content of original jurisdiction petition review,” governs petitions for review addressed to an appellate court’s *original* jurisdiction and not its *appellate* jurisdiction. In contriving an argument for dismissal for lack of a verification, the Commission fails to address the directives of the Pennsylvania Constitution, 42 Pa. C.S. § 725(1) and Rule of Appellate Procedure 3321, all of which make clear that a petition for review of reapportionment appeal is within this Court’s appellate jurisdiction. The Commission simply disregards the applicable Rule 1513(d).

9. The rules governing the Court’s original jurisdiction are clearly inapplicable to reapportionment appeals. *See, e.g., Albert v. 2001 Legislative Reapportionment Comm’n*, 567 Pa. 670, 674, 790 A.2d 989, 992 (2002) (referring to the petitioners as “appellants” and the petitions for review as “appeals”); *In re 1991 Pa. Legislative Reapportionment Comm’n*, 530 Pa. 335, 342, 609 A.2d 132, 135 (1992) (same); *In re Reapportionment Plan for the Pa. Gen. Assembly*, 497 Pa. 525, 531, 442 A.2d 661, 664 (1981) (same); *Commonwealth ex. rel. Specter v. Levin*, 448 Pa. 1, 5, 293 A.2d 15, 17 (1972) (same). *See also* G. Darlington, K. McKeon, D. Schuckers, & K. Brown, *Pennsylvania Appellate Practice*, §§ 1513:1-5 (2009).

**Because An Appellate Jurisdiction Petition For Review Does Not Require A Verification,
The Preliminary Objection Is Without Legal Basis Or Merit**

10. Rule of Appellate Procedure 1513(d) describes the requisite contents for an appellate jurisdiction petition for review and specifically states that *no notice to plead or verification is necessary*. See Pa. R.A.P. 1513(d). Because the Petitioners' Petition for Review is, as matter of Constitutional dictate and statutory prescription, subject to this Court's appellate jurisdiction, Rule 1513(d) governs its contents.

11. Pursuant to Rule 1513(d), the Petitioners were not required to include a verification. *Accord Lycoming County Nursing Home Ass'n, Inc. v. Pa. Dep't of Labor*, 627 A.2d 238, 241 n. 5 (Pa. Commw. Ct. 1993) ("A petition for review in the nature of an appeal addressed to the appellate jurisdiction of the court is a 'notice pleading' document, and the petitioner need only make a general statement of the objections to the order or determination sought to be reviewed." (citation omitted)).

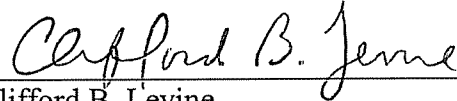
12. Further, even if a verification were required, the remedy for its absence is to allow a petitioner to amend the petition to include the verification, not to dismiss the petition. See *Aveline v. Pa. Bd. of Probation & Parole*, 729 A.2d 1254, 1259 n. 13 (Pa. Commw. Ct. 1999).

13. Thus, the Commission's demand that the Petition for Review should be dismissed for failure to include a verification is entirely inconsistent with any applicable authority under Pennsylvania law.

WHEREFORE, for these reasons, the Petitioners respectfully ask this Honorable Court to strike the Commission's "Preliminary Objection" to Petitioners' Petition for Review and to grant any other relief that is just and proper.

Respectfully submitted,

COHEN & GRIGSBY, P.C.



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Dated: January 17, 2012
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Counsel for Petitioners, Senator Jay Costa, et al.

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SENATOR JAY COSTA, SENATOR LAWRENCE M. FARNESE, JR., SENATOR CHRISTINE M. TARTAGLIONE, SENATOR SHIRLEY M. KITCHEN, SENATOR LeANNA M. WASHINGTON, SENATOR MICHAEL J. STACK, SENATOR VINCENT J. HUGHES, SENATOR ANTHONY H. WILLIAMS, SENATOR JUDITH L. SCHWANK, SENATOR JOHN T. YUDICHAK, SENATOR DAYLIN LEACH, SENATOR LISA M. BOSCOLA, SENATOR ANDREW E. DINNIMAN, SENATOR JOHN P. BLAKE, SENATOR RICHARD A. KASUNIC, SENATOR JOHN N. WOZNIAK, SENATOR JIM FERLO, SENATOR WAYNE D. FONTANA, SENATOR JAMES R. BREWSTER, and SENATOR TIMOTHY J. SOLOBAY,

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PROPOSED ORDER

And now, this _____ day of _____, 2012, upon consideration of Petitioners' Motion to Strike the Commission's Preliminary Objection to Petitioners' Petition for Review and any response thereto, it is hereby ORDERED, ADJUDGED and DECREED that the Motion to Strike is GRANTED.

BY THE COURT

J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion to Strike the Commission's "Preliminary Objection" to Petitioners' Petition for Review was served this 17th day of January, 2012, via electronic mail and first class mail, postage prepaid, on the following:

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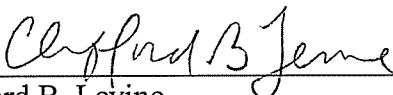
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