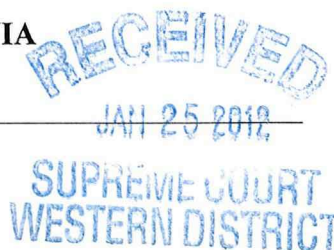


IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT



No. 1 WM 2012

Senator Jay Costa, et al., Petitioners

v.

2011 Pennsylvania Legislative Reapportionment Commission, Respondent

**OPPOSITION TO APPLICATION TO SUPPLEMENT PETITION FOR REVIEW OR,
IN THE ALTERNATIVE, TO ADDRESS QUESTION RAISED AT ORAL ARGUMENT**

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Pennsylvania Legislative
Reapportionment Commission**

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

Senator Jay Costa, et al.

1 WM 2012

Petitioners,

v.

2011 Pennsylvania Legislative
Reapportionment Commission,

Respondent.

**OPPOSITION TO APPLICATION TO SUPPLEMENT PETITION FOR REVIEW OR,
IN THE ALTERNATIVE, TO ADDRESS QUESTION RAISED AT ORAL ARGUMENT**

Respondent 2011 Pennsylvania Legislative Reapportionment Commission (“Commission”), by and through its undersigned counsel, files the following Opposition to Application to Supplement Petition for Review or, in the Alternative, to Address Question Raised at Oral Argument, averring as follows:

1. On January 10, 2012, Senator Jay Costa and other Democratic Senators (“Costa Petitioners”) filed a Petition for Review with this Court, challenging the 2011 Final Plan adopted by the Commission. On January 11, the period of time set forth in the Pennsylvania Constitution for appealing the Final Plan closed. On January 12, the Commission answered the Costa Petitioners’ Petition in its Consolidated Answer. After the parties filed briefs, the case was argued before this Court on January 23. On January 24, the Costa Petitioners filed an Application to Supplement Petition for Review or, in the Alternative, to Address Question Raised at Oral Argument (“Application”). For the reasons set forth below, the Application should be denied.

2. The Application should be denied as untimely. The constitutionally-set time period for appealing the Final Plan has closed. The pleadings have closed, briefs have been submitted, and oral argument has already taken place.

3. The Application should also be denied as meritless. The fact it seeks to have recognized—the announced retirement of Senator John Pippy of Senate District 37—has no legal relevance to this appeal. While incumbency and existing districts are permissible for the Commission to consider, the constitutionality of the Final Plan can only be measured by its adherence to the factors set forth in the Constitution. “Political neutrality” and incumbency are not among those factors.

4. The Commission moved Senate District 45 because it had the second-lowest population of any district in the Commonwealth. Senate District 37, on the other hand, lost comparatively little population and was in fact the most populated district in Allegheny County.

5. The allegation contained in Paragraph 2 of the Application concerning the views of the Chair is virtually identical to the allegation contained in Paragraph 45 of the Costa Petitioners’ Petition. The Commission incorporates its response to that paragraph contained in its Consolidated Answer and reiterates that the vote of the Chair to adopt the Final Plan is the only relevant statement of his position. See Consolidated Answer at subpart C, ¶ 45.

6. As the Costa Petitioners know, the decision this Court must make is whether the Final Plan is contrary to law. It is inconceivable to suggest that Senator Pippy’s January 24, 2012 announcement of his intention to retire could render unconstitutional a Final Plan that was otherwise constitutional when adopted on December 12, 2011. The Application asks this Court to find the Final Plan unconstitutional solely for political purposes and after the date that began the nominating petition cycle. Also, the Application fails to account for the far-reaching ripple

effects on the configuration of surrounding districts that would result from the change it suggests.

WHEREFORE, the 2011 Pennsylvania Legislative Reapportionment Commission respectfully requests that this Honorable Court deny the Application to Supplement Petition for Review or, in the Alternative, to Address Question Raised at Oral Argument. In the event that the Court grants the Application, the Commission respectfully request that it be granted twenty four (24) hours to file a response.

Respectfully Submitted,

DEL SOLE CAVANAUGH STROYD LLC



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**Counsel for Respondent 2011 Pennsylvania
Legislative Reapportionment Commission**

January 25, 2012

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Opposition to Application to Supplement Petition for Review or, in the Alternative, to Address Question Raised at Oral Argument* was served upon the following persons this 25th day of January, 2012, in the manner described below:

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