

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

-----X

SENATOR DOMINIC PILEGGI,
REPRESENTATIVE MICHAEL TURZAI, AND
LOUIS B. KUPPERMAN,

VERIFIED COMPLAINT

Plaintiffs,

v.

CAROL AICHELE, IN HER CAPACITY AS
SECRETARY OF THE COMMONWEALTH OF
PENNSYLVANIA,

Defendant.

-----X

Plaintiffs, Senator Dominic Pileggi, Representative Michael Turzai, and Louis B. Kupperman (collectively, "Plaintiffs"), by and through their attorneys, Blank Rome LLP and Eckert Seamans Cherin & Mellot, LLC, bring this complaint seeking injunctive relief and allege as follows:

NATURE OF THE ACTION

1. It is a basic principle of representative government that the weight of a citizen's vote cannot be made to depend on where he or she lives. The Federal and Pennsylvania Constitutions thus mandate that state legislative seats be apportioned equally so as to ensure that the guaranteed right of suffrage is not denied by debasement or dilution of the weight of a citizen's vote.

2. In comments to the press on January 26, 2012, Justice Max Baer of the Pennsylvania Supreme Court revealed how the Commonwealth's highest court anticipates that the primary elections that are scheduled to occur in Pennsylvania on April 24, 2012, will be run: They will not be run on the basis of a state legislative reapportionment plan drawn in response to the 2010 Federal decennial census data, but will instead be run on the basis of a soon-to-be-expired and decade-old state legislative reapportionment plan that is constitutionally infirm.

3. This action has been commenced to prevent the Secretary of the Commonwealth, acting in her official capacity, from administering the primary elections in violation of the "one person, one vote" Constitutional mandate. To prevent such a breach of federally-protected Constitutional rights by a state actor within the meaning of 42 U.S.C. § 1983, Plaintiffs seek this Court's immediate intervention and injunctive relief.

PARTIES

4. Plaintiff Dominic Pileggi is a citizen of and registered voter in the Commonwealth of Pennsylvania, residing at 804 E. 20th Street, Chester, Pennsylvania, which, under the existing apportionment scheme, is located in Senate District 9 and House District 159. Plaintiff Pileggi is also a Pennsylvania State Senator, the Majority Leader for the Senate of the Commonwealth of Pennsylvania, and a member of the Commonwealth's 2011 Legislative Reapportionment Commission (the "LRC").

5. Plaintiff Michael Turzai is a citizen of and registered voter in the Commonwealth of Pennsylvania, residing at 29 Meetinghouse Lane, Bradford Woods, Pennsylvania, which, under the existing apportionment scheme, is located in Senate District 40 and House District 28. Plaintiff Turzai is also a Pennsylvania State Representative, the Majority Leader for the House of Representatives of the Commonwealth of Pennsylvania, and a member of the Commonwealth's 2011 LRC.

6. Plaintiff Louis B. Kupperman is a citizen of and registered voter in the Commonwealth of Pennsylvania, residing at 80 Delancy Court, Phoenixville, Pennsylvania, which, under the existing apportionment scheme, is located in Senate District 19 and House District 157.

7. Defendant Carol Aichele is the Secretary of the Commonwealth of Pennsylvania. She is a defendant in her official capacity.

8. The Secretary of the Commonwealth is Pennsylvania's Chief Election Official. The Pennsylvania Election Code sets forth the Secretary of the Commonwealth's powers and duties with respect to elections. *See, e.g.*, 25 P.S. §§ 2621, 2780, 2781, 2786. Entrusted with the responsibility for overseeing elections in Pennsylvania, the Secretary of the Commonwealth is required, among other election-related duties, to provide to the county boards of elections written notice of all offices for which candidates are to be nominated; determine the sufficiency of nomination petitions, certificates and papers of candidates; certify to county boards of elections for primaries and elections the names of candidates; proclaim election results; and issue certificates of election to successful candidates. *Id.* §§ 2621, 2786.

JURISDICTION AND VENUE

9. Jurisdiction is based on 28 U.S.C. §§ 1331, 1343, and 1357. Venue is proper in this judicial district under 28 U.S.C. § 1391.

BACKGROUND

10. A Final Reapportionment Plan of the Pennsylvania LRC was filed on November 19, 2001, and approved by the Pennsylvania Supreme Court on February 15, 2002 (the "2001 Plan").

11. The 2001 Plan was based on census data from the year 2000.

12. The most recent Federal decennial census data, that of 2010, exposes the current infirmities of the 2001 Plan, as the state legislative districts delineated in that plan can no longer be said to meet the equal population requirement established by the United States Constitution as well as the Pennsylvania Constitution. The 2010 census revealed, among other things, that in the decade since the 2000 census, a population shift from the west to the east has continued in the Commonwealth.

13. Pursuant to Section 17(a) of Article 2 of the Pennsylvania Constitution, in 2011, the year following the Federal decennial census, the LRC was constituted for the purpose of reapportioning the Commonwealth of Pennsylvania based on the 2010 census.

14. The LRC declared the 2010 census data to be in usable form on August 17, 2011.

15. On December 12, 2011, the LRC adopted its Final Reapportionment Plan for the Commonwealth (the “2011 Plan”).

16. In a per curiam Order dated January 25, 2012, the Pennsylvania Supreme Court remanded the 2011 Plan to the LRC “with a directive to reapportion the Commonwealth in a manner consistent with this Court’s opinion, which will follow.” (A true and correct copy of this Order is attached as Exhibit A.)

17. In that Order, the Pennsylvania Supreme Court advised that the 2001 Plan “shall remain in effect until a revised final 2011 Legislative Reapportionment Plan having the force of law is approved.”

18. As of the date of this filing, the Pennsylvania Supreme Court has not yet issued an opinion identifying the rationale behind its January 25, 2012, Order.

19. Pennsylvania Supreme Court Justice Max Baer, a Justice who, with respect to the Court's January 25th Order, voted with the majority, provided an interview with Capitolwire news service the day after that Order's entry. On January 26, 2012, that news service reported that Justice Baer advised that the majority of the Court believes that the process of fixing the legislative maps comprising the 2011 Plan that the LRC provided will take time. According to this press report, Justice Baer also stated: "**I think this year's election[s] are going to go on the 2001 lines,**" and "I think that is what the majority intended and I think that is what a reading of the chief justice's order said." (Emphasis added.) (A true and correct copy of this January 26, 2012, Capitolwire article is attached as Exhibit B.)

20. Any utilization of the 2001 Plan in the upcoming elections, however, will run afoul of the Federal and Commonwealth Constitutions.

21. In short, when compared with the 2000 census data, the 2010 census data showed a substantial decline in population in the western part of the Commonwealth and a growth in population in the eastern part.

22. Under the 2010 census, the current ideal Senate district population in the Commonwealth – the population that would allow equal apportionment of Pennsylvania residents among its 50 senatorial districts – is 254,048.

23. The 2010 census data demonstrated that because of the ongoing eastward shift in the Commonwealth's population over the past ten years, every Senate district in the west, other than Senate District 40, is now less than the ideal population and, with only a few exceptions, every district in the east is now greater than the ideal population.

24. Indeed, the populations of many of the current Senate districts (*i.e.*, existing under the 2001 Plan) in Southwestern Pennsylvania **fall short** of the current ideal Senate

district population of 254,048 **by more than 10 percent**. *See, e.g.*, Senate District 38 [-15.7 percent; 39,773 people], Senate District 45 [-13.0 percent; 33,067 people], Senate District 32 [-11.2 percent; 28,411 people], Senate District 47 [-11.1 percent; 28,259 people]. Conversely, many Senate districts in the growing eastern and southeastern regions of the Commonwealth have populations that **exceed** the ideal population **by 10 percent or more**. *See, e.g.*, Senate District 44 [+13.6 percent; 34,625 people], Senate District 16 [+13.5 percent; 34,225 people], Senate District 28 [+12.0 percent; 30,414 people], Senate District 19 [+10.6 percent; 26,926 people]. Put differently, the range of deviation within existing Senate districts exceeds 29 percent or more than 74,000 people.

25. Deviations within the current House of Representatives districts (*i.e.*, existing under the 2001 Plan) are similarly out of line.

26. According to 2010 census statistics, the ideal population among Pennsylvania's 203 legislative districts is 62,573 residents per district. The 2010 census data reveals that as a result of shifts in population over the past ten years, the current 203 legislative districts vary widely in population.

27. For example, current Representative District 134 has a population of 77,873 residents under the 2001 Plan district boundaries, which exceeds the 2010 ideal population by 15,300, or 24.45 percent. This district has the largest population disparity of Pennsylvania's 203 representative districts. Conversely, current Representative District 24 has a population of 51,007 under the 2001 Plan district boundaries, which falls short of the 2010 ideal population by 11,566, or 18.48 percent.

28. Under the 2001 Plan, there are gross disparities in district population. Indeed, Representative districts 1, 9, 12, 13, 14, 19, 20, 24, 26, 27, 34, 35, 44, 47, 67, 71, 75, 77,

87, 89, 90, 92, 93, 94, 113, 130, 132, 134, 137, 146, 147, 150, 155, 159, 160, 175, 176, 189, 190, 191, 192, 196, 198, 200, and 201 have population disparities of *at least* ten percent under the 2001 Plan.

29. In fact, the overall range of population deviation that has occurred across all Pennsylvania's Representative districts since the adoption of the 2001 Plan is 43 percent.

30. The foregoing population deviations greater than 10% are *prima facie* discriminatory and violative of the "one person, one vote" constitutional mandate, rendering use of the 2001 Plan unconstitutional.

31. With respect to the existing Senate Districts of the individual plaintiffs, the population of Senate District 9, where Plaintiff Pileggi resides, exceeds the ideal population by 9.2 percent. The population of Senate District 40, where Plaintiff Turzai resides, exceeds the current ideal population by 0.8 percent. And the population of Senate District 19, where Plaintiff Kupperman resides, exceeds the current ideal population by 10.6 percent.

32. With respect to the existing House Districts of the individual plaintiffs, the population of House District 159, where Plaintiff Pileggi resides, exceeds the ideal population by 10.9 percent. The population of House District 28, where Plaintiff Turzai resides, exceeds the current ideal population by 7.5 percent. And the population of House District 157, where Plaintiff Kupperman resides, exceeds the current ideal population by 7.1 percent.

33. If this year's elections are held under the 2001 Plan, approximately 1.4 million Pennsylvania residents would live in Senate districts with populations in excess of 10 percent above the current ideal population and thus would be severely and unconstitutionally under-represented in the Senate. Likewise, approximately 1.8 million Pennsylvania residents

would live in House districts with populations in excess of 10 percent above the current ideal population and thus would be severely and unconstitutionally under-represented in the House.

34. Approximately five million more would also be unconstitutionally under-represented in the Senate and the House by living in districts with populations in excess of 5 percent above the current ideal population.

35. The Pennsylvania Supreme Court has not approved a reapportionment plan based on 2010 census data.

36. If the upcoming elections are administered under the 2001 Plan, violations of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and of Article I §§ 1, 5, 26 and Article II, § 16 of the Pennsylvania Constitution, will result.

37. In the absence of the injunctive relief requested of the Court in this action, the April 24, 2012, elections will proceed, in violation of the Constitutional rights of the Plaintiffs, on the basis of the 2001 Plan.

38. Unless this matter is resolved expeditiously, Plaintiffs will suffer irreparable harm.

COUNT I

(CLAIM FOR INJUNCTIVE RELIEF UNDER 42 U.S.C. § 1983 TO PREVENT DEPRIVATION OF FEDERAL CONSTITUTIONAL RIGHTS)

39. Plaintiffs repeat and reallege the foregoing Paragraphs as if fully set forth herein.

40. The 2001 Plan was approved by the Pennsylvania Supreme Court on February 15, 2002.

41. The 2010 census data, which the Commonwealth's 2011 LRC declared to be in usable form on August 17, 2011, revealed infirmities in the apportionment scheme existing under the 2001 Plan.

42. On February 15, 2012, the 2001 Plan will be ten years old, rendering it constitutionally suspect and imbalanced.

43. Under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, any election that hereafter occurs in the Commonwealth on the basis of the 2001 Plan will be invalid and violative of the one-person, one-vote rule.

44. Such a violation of the one-person, one-vote rule offends the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

45. If the primary elections presently scheduled to occur on April 24, 2012, proceed pursuant to the 2001 Plan, Plaintiffs will suffer the deprivation of federally-protected Constitutional rights.

46. If the primary elections presently scheduled to occur on April 24, 2012, proceed pursuant to the 2001 Plan, the Defendant, a state actor who will be acting under color of state law, will cause this deprivation.

47. As a result, Plaintiffs seek relief under 42 U.S.C. § 1983.

48. Unless promptly restrained and enjoined by the Court, the Defendant, acting in her official capacity, is likely to engage in conduct, *i.e.*, administering the April 24, 2012, primary elections in violation of the Equal Protection Clause, that will cause irreparable harm to Plaintiffs.

49. Plaintiffs have no adequate remedy at law, and thus are entitled to injunctive relief.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order granting the following relief:

A. A preliminary and permanent injunction precluding the Secretary of the Commonwealth of Pennsylvania from implementing the April 24, 2012, primary elections – or any other elections in 2012 – on the basis of the 2001 Legislative Reapportionment Plan; and

B. An award of such other and further relief as the Court may deem just and proper.

Dated: February 3, 2012

**ECKERT SEAMANS CHERIN &
MELLOT, LLC**

By:



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Michael Turzai*

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By:

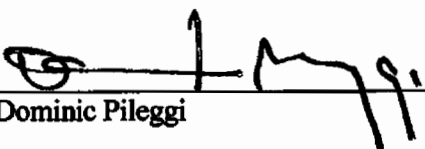


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*Attorneys for Plaintiffs Senator Dominic
Pileggi and Louis B. Kupperman*

VERIFICATION

I, Dominic Pileggi, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements in this Verification are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

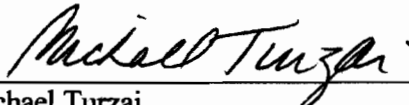


Dominic Pileggi

Dated: February 3, 2012

VERIFICATION

I, Michael Turzai, hereby affirm under the penalties for perjury that the factual averments set forth in the foregoing Verified Complaint are true, correct and based upon my personal knowledge.

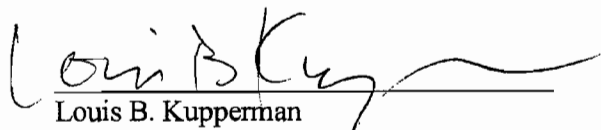


Michael Turzai

Dated: February 1, 2012

VERIFICATION

I, Louis B. Kupperman, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements in this Verification are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Louis B. Kupperman

Dated: February 3, 2012

EXHIBIT A

**[J- 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 31- 2012]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

AMANDA E. HOLT, ELAINE TOMLIN, LOUIS : No. 7 MM 2012
NUDI, DIANE EDBRIL, DARIEL I. JAMIESON, :
LORA LAVIN, JAMES YOEST, JEFFREY :
MEYER, CHRISTOPHER H. FROMME, : Appeal from the Legislative
TIMOTHY F. BURNETT, CHRIS HERTZOG, : Reapportionment Plan of the 2011
GLEN ECKHART, and MARY FRANCES : Legislative Reapportionment
BALLARD, : Commission, dated December 12, 2011

Petitioners

v.

2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION, :

Respondent

SENATOR JAY COSTA, SENATOR : No. 1 WM 2012
LAWRENCE M. FARNESE, JR., SENATOR :
CHRISTINE M. TARTAGLIONE, SENATOR :
SHIRLEY M. KITCHEN, SENATOR LEANNA : Appeal from the Legislative
M. WASHINGTON, SENATOR MICHAEL J. : Reapportionment Plan of the 2011
STACK, SENATOR VINCENT J. HUGHES, : Legislative Reapportionment
SENATOR ANTHONY H. WILLIAMS, : Commission, dated December 12, 2011
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

MAYOR CAROLYN COMITTA, COUNCIL
PRESIDENT HOLLY BROWN, WILLIAM J.
SCOTT, JR., HERBERT A. SCHWABE, II,
JANE HEALD CLOSE, FLOYD ROBERT
BIELSKI, DAVID LALEIKE, E. BRIAN
ABBOTT, NATHANIEL SMITH, and W.
DONALD BRACELAND,

No. 2 MM 2012

Appeal from the Legislative
Reapportionment Plan of the 2011
Legislative Reapportionment
Commission, dated December 12, 2011

Petitioners

v.

2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION,

Respondent

MAYOR LEO SCODA and COUNCIL
PERSON JENNIFER MAYO,

No. 3 MM 2012

Petitioners

Appeal from the Legislative
Reapportionment Plan of the 2011
Legislative Reapportionment
Commission, dated December 12, 2011

v.

2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION,

Respondent

THOMAS SCHIFFER, ALISON BAUSMAN,
RACHEL J. AMDUR, JOAN TARKA,
LAWRENCE W. ABEL, MARGARET G.
MORSHECK, LAWRENCE J. CHRZAN,
JULIA SCHULTZ and SHIRLEY RESNICK,

No. 4 MM 2012

Appeal from the Legislative
Reapportionment Plan of the 2011
Legislative Reapportionment

WILLIAM C. KORTZ, MICHELLE L. VEZZANI, :	No. 4 WM 2012
MICHAEL E. CHEREPKO, GREGORY :	
EROSENKO, JOYCE POPOVICH, JOHN :	
BEVEC, LISA BASHIOUM, and RICHARD :	Appeal from the Legislative
CHRISTOPHER,	Reapportionment Plan of the 2011
	Legislative Reapportionment
Petitioners	Commission, dated December 12, 2011
	:
	:
v.	:
	:
	:
2011 LEGISLATIVE REAPPORTIONMENT :	
COMMISSION,	
	:
	:
Respondent	:

ORDER

PER CURIAM

DECIDED: January 25, 2012

AND NOW, this 25th day of January, 2012, upon consideration of the petitions for review and briefs in these legislative redistricting appeals, and after entertaining oral argument on January 23, 2012, this Court finds that the final 2011 Legislative Reapportionment Plan is contrary to law. PA. CONST. art. II, § 17(d).¹ Accordingly, the final 2011 Legislative Reapportionment Plan is **REMANDED** to the 2011 Legislative Reapportionment Commission with a directive to reapportion the Commonwealth in a manner consistent with this Court's Opinion, which will follow. Id.

The 2001 Legislative Reapportionment Plan, which this Court previously ordered to "be used in all forthcoming elections to the General Assembly until the next constitutionally mandated reapportionment shall be approved," Albert v. 2001 Legislative Reapportionment Commission, 790 A.2d 989, 991 (Pa. 2002) (quoting *per curiam* order),

¹ For administrative purposes only, we have designated the appeal in Holt v. 2011 Legislative Reapportionment Commission, 7 MM 2012 / J-7-2012, as the lead case.

shall remain in effect until a revised final 2011 Legislative Reapportionment Plan having the force of law is approved. PA. CONST. art. II, § 17(e).

All 2012 election dates shall remain the same, with the exception of the primary election calendar, which is adjusted as follows:

Thursday, January 26	First day to circulate nomination petitions
Thursday, February 16	Last day to file nomination petitions
Thursday, February 23	Last day to file objections to set aside nomination petitions
Monday, February 27	Last day that court may fix for hearings on objections to nomination petitions
Friday, March 2	Last day for court to finally determine objections to nomination petitions
Friday, March 2	Last day for withdrawal by candidates who filed nomination petitions

Any signatures on nomination petitions dated January 24 or January 25, 2012, shall be deemed valid as to timeliness, subject, however, to any other statutory challenge.

Jurisdiction is retained.

Mr. Justice Saylor files a dissenting statement, in which Mr. Justice Eakin and Madame Justice Orié Melvin join.

**[J- 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 31- 2012]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

AMANDA E. HOLT, ELAINE TOMLIN, LOUIS : No. 7 MM 2012
NUDI, DIANE EDBRIL, DARIEL I. JAMIESON, :
LORA LAVIN, JAMES YOEST, JEFFREY :
MEYER, CHRISTOPHER H. FROMME, : Appeal from the Legislative
TIMOTHY F. BURNETT, CHRIS HERTZOG, : Reapportionment Plan of the 2011
GLEN ECKHART, and MARY FRANCES : Legislative Reapportionment
BALLARD, : Commission, dated December 12, 2011

Petitioners

v.

2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION,

Respondent

SENATOR JAY COSTA, SENATOR : No. 1 WM 2012
LAWRENCE M. FARNESE, JR., SENATOR :
CHRISTINE M. TARTAGLIONE, SENATOR :
SHIRLEY M. KITCHEN, SENATOR LEANNA : Appeal from the Legislative
M. WASHINGTON, SENATOR MICHAEL J. : Reapportionment Plan of the 2011
STACK, SENATOR VINCENT J. HUGHES, : Legislative Reapportionment
SENATOR ANTHONY H. WILLIAMS, : Commission, dated December 12, 2011
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 :

MAYOR CAROLYN COMITTA; COUNCIL :
PRESIDENT HOLLY BROWN; WILLIAM J. :
SCOTT, JR.; HERBERT A. SCHWABE, II; :
JANE HEALD CLOSE; FLOYD ROBERT :
BIELSKI; DAVID LALEIKE; E. BRIAN :
ABBOTT; NATHANIEL SMITH; and W. :
DONALD BRACELAND, :

No. 2 MM 2012

Appeal from the Legislative
Reapportionment Plan of the 2011
Legislative Reapportionment
Commission, dated December 12, 2011

Petitioners

v.

2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION, :

Respondent :

MAYOR LEO SCODA and COUNCIL :
PERSON JENNIFER MAYO, :

No. 3 MM 2012

Petitioners.

Appeal from the Legislative
Reapportionment Plan of the 2011
Legislative Reapportionment
Commission, dated December 12, 2011

v.

2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION, :

Respondent :

THOMAS SCHIFFER, ALISON BAUSMAN, :
RACHEL J. AMDUR, JOAN TARKA, :
LAWRENCE W. ABEL, MARGARET G. :
MORSHECK, LAWRENCE J. CHRZAN, :
JULIA SCHULTZ and SHIRLEY RESNICK, :

No. 4 MM 2012

Appeal from the Legislative
Reapportionment Plan of the 2011
Legislative Reapportionment
Commission, dated December 12, 2011

Petitioners

v.		
2011 LEGISLATIVE REAPPORTIONMENT COMMISSION,		
Respondent		
SEKELA COLES, CYNTHIA JACKSON and LEE TALIAFERRO,		No. 5 MM 2012
Petitioners		Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011
v.		
2011 LEGISLATIVE REAPPORTIONMENT COMMISSION,		
Respondent		
PATTY KIM,		No. 6 MM 2012
Petitioner		Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011
v.		
2011 LEGISLATIVE REAPPORTIONMENT COMMISSION,		
Respondent		
EDWARD J. BRADLEY, JR., PATRICK MCKENNA, JR., DOROTHY GALLAGHER, RICHARD H. LOWE, and JOHN F. "JACK" BYRNE,		No. 8 MM 2012
Petitioners		Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011
v.		

2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION,

Respondent

DENNIS J. BAYLOR,

Petitioner

v.

No. 9 MM 2012

Appeal from the Legislative
Reapportionment Plan of the 2011
Legislative Reapportionment
Commission, dated December 12, 2011

2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION,

Respondent

ANDREW DOMINICK ALOSI,

Petitioner

v.

No. 10 MM 2012

Appeal from the Legislative
Reapportionment Plan of the 2011
Legislative Reapportionment
Commission, dated December 12, 2011

2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION,

Respondent

CARLOS A. ZAYAS,

Petitioner

v.

No. 17 MM 2012

Appeal from the Legislative
Reapportionment Plan of the 2011
Legislative Reapportionment
Commission, dated December 12, 2011

2011 LEGISLATIVE REAPPORTIONMENT
COMMISSION,

Respondent

WILLIAM C. KORTZ, MICHELLE L. VEZZANI,	:	No. 4 WM 2012
MICHAEL E. CHEREPKO, GREGORY	:	
ERSENKO, JOYCE POPOVICH, JOHN	:	
BEVEC, LISA BASHIOUM, and RICHARD	:	Appeal from the Legislative
CHRISTOPHER,	:	Reapportionment Plan of the 2011
	:	Legislative Reapportionment
Petitioners	:	Commission, dated December 12, 2011
	:	
v.	:	
	:	
2011 LEGISLATIVE REAPPORTIONMENT	:	
COMMISSION,	:	
	:	
Respondent	:	

DISSENTING STATEMENT

MR. JUSTICE SAYLOR

FILED: January 25, 2012

Based on the petitions, briefs, and argument, I am not persuaded that the 2011 Legislative Reapportionment Plan is contrary to law as reflected in the existing precedent. Although I am receptive to the concern that past decisions of the Court may suggest an unnecessarily stringent approach to equalization of population as between voting districts, I believe this could be addressed via prospective guidance from the Court.

Mr. Justice Eakin and Madame Justice Orié Melvin join this dissenting statement.

EXHIBIT B

Capitolwire: Justice Baer says 2012 elections likely to be based on 2001 legislative maps.

With a formal decision still about a week away from release, Justice Max Baer speaks to defend the decision, explain its likely impacts.

HARRISBURG (Jan. 26) – Supreme Court Justice Max Baer said issuing an opinion regarding the Legislative Reapportionment Commission's plan "will take a week or so" and that the court majority believes the process of fixing the legislative maps will take time.

"I think this year's elections are going to go on the 2001 lines," Baer said in an interview with Capitolwire. "I think that is what the majority intended and I think that is what a reading of the chief justice's order said."

Baer said: "It takes a week or so to write a majority opinion on any big case, and it will take a week or so here."

But the day after the court stunned the political world by telling the legislative leaders and the court-picked chairman, former Judge Stephen McEwen, their map was unconstitutional, Baer said he and his colleagues were surprised by the amount and furor of the reaction.

"I did not expect this maelstrom," he said. "I don't think any of us did. But in 40 years since the constitution established this procedure, this is the first the court has voted to not rubberstamp the commission's work. And, you know, the constitution was not set up to rubberstamp things."

That meant, he said, that the trip of himself and Chief Justice Ron Castille to Puerto Rico for a conference of the Pennsylvania Bar Association, was not keeping any candidates in suspense: they should expect to run based on the 2001 redistricting lines. And Baer said the trip would not add any time beyond the usual week "to write a majority opinion. That is just what it takes."

But Baer's decision to discuss the case while the commission members were still awaiting the specific opinion upset Senate Majority Leader Dominic Pileggi, R-Delaware.

"I think it's outrageous that instead of issuing an opinion, to provide guidance to over 12 million Pennsylvanians as to who their representatives and state senators will be in the 2012 election cycle, we are reading press comments from a single Supreme Court justice in a resort in Puerto Rico.

"I look forward to reading the court's opinions and working with the commission to respond in time for the 2012 election cycle. On a matter as important as drawing legislative districts, I think the court should explain itself in formal opinions rather than in conversations with newspaper reporters."

Lisa Scullin, spokeswoman for Senate Minority Leader Jay Costa, D-Allegheny, responded: "We are obviously pleased to hear this, but we are not going to speculate further until we read the Court's opinion."

Mike Barley, executive director for the state Republican Party, released a statement about Baer's comments to Capitolwire:

"While the rest of Pennsylvania anxiously awaits the Court's opinion on redistricting, Justice Baer decided to provide his own commentary on the matter, violating both Judicial Canon and the Pennsylvania Constitution in the process. ... Justice Baer's comments are more than just an abdication of his judicial responsibilities; they are in direct contravention of both the Pennsylvania Code of Judicial Conduct and the Pennsylvania Constitution. Justice Baer should be reprimanded for his poor judgment and recuse himself from any judicial activity related to this matter."

Democratic State Committee spokesman Mark Nicastre responded: "Republicans tried to pass a flawed map, and they got called out. Now they're flailing. We are pleased with Court's Order finding that the Republican-controlled Reapportionment Commission issued a plan that is contrary to law, and we look forward to the Court's Opinion and the opportunity for a new and fair plan."

Baer, Chief Justice Ron Castille, and Baer's fellow Democratic Justices Seamus McCaffery and Debra Todd voted to send the map back for corrections to make it constitutional.

The court's remaining three justices, Republicans Thomas Saylor, Mike Eakin and Joan Orié Melvin, voted the current map was constitutional. But even they backed Saylor's written submission that said while this map was constitutional, the court could have given guidance to resolve issues in redistricting practices before the next legislative reapportionment in 2021.

Baer also noted that most of the justices thought the reapportionment system needed to be changed, noting that the three judges who voted the plan was constitutional "wanted to give prospective guidance. So everyone agreed there needed to be changes. The majority just felt they were needed now, and that justified sending it back to the commission."

Baer confirmed the opinion would cite "the splitting of too many counties, cities, wards and districts" as unconstitutional. "The constitution says they are not to be split unless absolutely necessary and we are affirming that. And defining it. The majority opinion will have specific instructions as how we read the constitution's provisions about compactness, about population deviation and splits of districts. The opinion will change how they balance the factors.

"I don't think the commission could sit down, re-look at this after we give them guidance, and do it in a week or so," he said. "If they can do it in time to have the elections on these lines this year, that is fine, we are open to that. But I don't see how they can do that."

In addition to whatever turn-around time the commission would have, the courts would have to then allow time for appeals to be filed, then hear the appeals, Baer said.

"The chief justice's order was to provide the information to the political establishment that these elections are likely to go on the 2001 lines. We are going to do this quickly, but we felt it was not likely it could be quick enough, and we wanted people to know what the rules were, so they would know what they are filing for. But we have no agenda about whether it gets done and which lines will be in place. But while it goes forward, until we have a new plan that the court approves, we wanted people to know what the lines were, what the rules were.

"When the commission files its plan, and we go through the appeals and hearing process on the new lines, then we will figure out if they apply for the 2013 or 2014 elections or when they would apply."

While Baer declined to comment, another source familiar with the decision said it was unlikely to prevent the future plan from moving seats from west to east, or moving Democrats only from the west to other places, as the House and Senate plans did.

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