

BEFORE THE SUPREME COURT OF PENNSYLVANIA

WESTERN 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.

PETITION FOR REVIEW

**In The Nature Of An Appeal From The 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, 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”), in their capacities as elected officials and as individual voters in the Commonwealth of Pennsylvania, file this Petition for Review, seeking this Court’s review of the December 12, 2011 final reapportionment plan (“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. Senator Jay Costa is the duly-elected State Senator for the 43rd District of Pennsylvania and a registered voter in Allegheny County, Pennsylvania. Senator Costa is the elected Leader of the Senate Democratic Caucus and a member of the Commission. Senator Costa brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

4. Senator Lawrence M. Farnese, Jr. is the duly-elected State Senator for the 1st District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Farnese brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

5. Senator Christine M. Tartaglione is the duly-elected State Senator for the 2nd District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Tartaglione is the elected Caucus Secretary of the Senate Democratic Caucus. Senator Tartaglione brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

6. Senator Shirley M. Kitchen is the duly-elected State Senator for the 3rd District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Kitchen brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

7. Senator LeAnna M. Washington is the duly-elected State Senator for the 4th District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Washington brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

8. Senator Michael J. Stack is the duly-elected State Senator for the 5th District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Stack brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

9. Senator Vincent J. Hughes is the duly-elected State Senator for the 7th District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania.

Senator Hughes is the elected Appropriations Committee Chairman of the Senate Democratic Caucus. Senator Hughes brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

10. Senator Anthony H. Williams is the duly-elected State Senator for the 8th District of Pennsylvania and a registered voter in Philadelphia County, Pennsylvania. Senator Williams is the elected Whip of the Senate Democratic Caucus. Senator Williams brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

11. Senator Judith L. Schwank is the duly-elected State Senator for the 11th District of Pennsylvania and a registered voter in Berks County, Pennsylvania. Senator Schwank brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

12. Senator John T. Yudichak is the duly-elected State Senator for the 14th District of Pennsylvania and a registered voter in Luzerne County, Pennsylvania. Senator Yudichak brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

13. Senator Daylin Leach is the duly-elected State Senator for the 17th District of Pennsylvania and a registered voter in Montgomery County, Pennsylvania. Senator Leach brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

14. Senator Lisa M. Boscola is the duly-elected State Senator for the 18th District of Pennsylvania and a registered voter in Northampton County, Pennsylvania. Senator Boscola is the elected Policy Chairman of the Senate Democratic Caucus.

Senator Boscola brings this Petition in her capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

15. Senator Andrew E. Dinniman is the duly-elected State Senator for the 19th District of Pennsylvania and a registered voter in Chester County, Pennsylvania. Senator Dinniman brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

16. Senator John P. Blake is the duly-elected State Senator for the 22nd District of Pennsylvania and a registered voter in Lackawanna County, Pennsylvania. Senator Blake brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

17. Senator Richard A. Kasunic is the duly-elected State Senator for the 32nd District of Pennsylvania and a registered voter in Fayette County, Pennsylvania. Senator Kasunic is the elected Caucus Chairman of the Senate Democratic Caucus. Senator Kasunic brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

18. Senator John N. Wozniak is the duly-elected State Senator for the 35th District of Pennsylvania and a registered voter in Cambria County, Pennsylvania. Senator Wozniak brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

19. Senator Jim Ferlo is the duly-elected State Senator for the 38th District of Pennsylvania and a registered voter in Allegheny County, Pennsylvania. Senator Ferlo brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

20. Senator Wayne D. Fontana is the duly-elected State Senator for the 42nd District of Pennsylvania and a registered voter in Allegheny County, Pennsylvania. Senator Fontana is the elected Caucus Administrator of the Senate Democratic Caucus. Senator Fontana brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

21. Senator James R. Brewster is the duly-elected State Senator for the 45th District of Pennsylvania and a registered voter in Allegheny County, Pennsylvania. Senator Brewster brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

22. Senator Timothy J. Solobay is the duly-elected State Senator for the 46th District of Pennsylvania and a registered voter in Washington County, Pennsylvania. Senator Solobay brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the Final Plan.

Identity Of Respondent

23. The Respondent is the 2011 Legislative Reapportionment Commission.

24. 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 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

25. The determination for which the Petitioners seek review is the Final Plan of the Commission that was approved on December 12, 2011. A copy of the Final Plan for the Pennsylvania Senate and the map reflecting the Final Plan for the Pennsylvania Senate are attached as Appendices A and B.

Controlling Constitutional Provision

26. 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. Constit. Art. II, sect. 16 (emphasis supplied).

Relevant Procedural Background

27. 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.

28. 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. (“Preliminary Plan”).

29. The Preliminary Plan was not revealed to the Senate and House minority leader members of the Commission until one half-hour in advance of the time scheduled for voting on the Preliminary Plan and no meaningful opportunity for review of the Preliminary Plan was provided.

30. 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.

31. During the course of the hearings, witnesses from across the Commonwealth testified as to the importance of not dividing political subdivisions unnecessarily. Government officials described the difficulties inherent in seeking grants or support for projects where district boundaries divide municipalities and counties. Those whose political subdivisions remained intact generally supported the Preliminary Plan for the very reason that their communities remained intact. However, those whose political subdivisions were split objected to the Preliminary Plan and asked the Commission to make appropriate adjustment to eliminate divisions where possible.

32. During the course of the public hearings, Senator Costa presented the Commission with statewide statistical data which indicated that the Preliminary Plan resulted in many divisions of political subdivisions that were not absolutely necessary.

33. On November 30, 2011, Senator Costa filed Exceptions to the Preliminary Plan. The Commission failed to adequately address those Exceptions in the formulation and adoption of the Final Plan, and the Exceptions are reflected in the challenges set forth in this Petition.

34. Before the Commission voted on the Final Plan, Senator Costa presented the Commission with an alternative plan which provided the Commission with an opportunity to reduce the number of county and municipal divisions, while meeting the other mandatory requirements of the Constitution, including the creation of districts of compact and contiguous territory as nearly equal in population as practicable (“Alternative Plan”).

35. The Alternative Plan reflected how numerous political subdivisions could remain intact, even while preserving the general electoral performance characteristics of the districts created with the Preliminary Plan.

36. On December 12, 2011, however, with a 4 to 1 vote, the Commission approved the Final Plan, without publicly addressing the public comments or expressing whether the various splits of political subdivisions were “absolutely necessary.”

37. The presentment of the Alternative Plan, along with the statistical information concerning unnecessary splits of political subdivisions, established that the extent of political subdivision splits contained in the Final Plan was not absolutely necessary.

Factual Issues Relevant To Appeal

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

39. To achieve the goal of “one person, one vote,” the average senatorial district should contain approximately 254,000 residents. Under this standard, only two

political subdivisions, the City of Philadelphia and the City of Pittsburgh, must necessarily be divided.

40. The Final Plan divides four municipalities in the entire state – Philadelphia, Pittsburgh, as well as Upper Darby Township and Darby Township, both in Delaware County. The Alternative Plan demonstrates that the division of those Townships is not necessary. Placing these two municipalities in separate senatorial districts is simply not “absolutely necessary.”

41. The gratuitous division of Upper Darby Township and Darby Township is wholly unwarranted. In each of those Townships, wards with a majority of African-American voters were separated from the remaining Township wards and were removed from their current Senate district. These wards were placed in the 8th Senatorial District, a predominantly African-American district based in Philadelphia.

42. Further, the Preliminary Plan altered the 15th Senatorial District which consisted of most of Dauphin County, including the City of Harrisburg, the state capital and county seat of Dauphin County. The Preliminary Plan contained a bizarre C-shaped district that covered 5 counties and excluded the City of Harrisburg, while the majority of Dauphin County remained in the 15th Senatorial District.

43. Although the Final Plan reflected some compaction of the 15th Senatorial District, it continued to exclude the City of Harrisburg, a predominantly African-American community, from Dauphin County and from the 15th Senatorial District. The Commission offered no explanation as to why this division would be absolutely necessary. The separation of the Dauphin County seat from the 15th District, covering most of Dauphin County, was not absolutely necessary.

44. The population data from the Federal decennial census indicated a need to move one senatorial district from the western part to the eastern part of the Commonwealth.

45. The Chair of the Commission initially expressed a view that reapportionment should generally allow for continuity and that seats of existing members should be retained in favor of retiring members in a manner that allows for political neutrality, addresses the community of interest of constituents and is consistent with the Constitution.

46. In the course of the hearings, significant testimony was provided with regard to the desire to keep the communities in the historic Monongahela Valley region in one unified district, and the importance of retaining the 45th Senatorial District in the Mon Valley, as that region recovers from the loss of its steel industry.

47. A number of those testifying praised the effectiveness of Senator Brewster, the newly elected Senator for the 45th Senatorial District.

48. The Commission was made aware of a western-based senator who had expressed an interest in retiring, yet ignored the view the Chair earlier had expressed regarding preserving seats of existing members, and instead opted to relocate the 45th District from the Mon Valley to Monroe County.

49. Despite the testimony presented and the importance of keeping the Mon Valley communities unified, the Final Plan moved the 45th Senatorial District, a Democratic performing district, to create a new district in Monroe County, a Republican performing area.

50. The Alternative Plan demonstrated that selecting the 47th Senatorial District in Allegheny County would have allowed for the required population adjustment while also reducing the number of divisions of political subdivisions. The adjustment proposed in the Alternative Plan would have allowed for political neutrality and would have preserved a senate seat for a group of communities in the Mon Valley with a common interest and purpose, and done so in a constitutional manner, by reducing unnecessary splits of political subdivisions.

51. Although alternative options were available to the Commission, involving districts with senators contemplating retirement, the Commission chose to move the 45th Senatorial District to Monroe County.

52. The Final Plan contains a significant number of divisions among political subdivisions which, as the Alternative Plan indicates, contain unnecessary divisions of political subdivisions. These include, as set forth in the Alternative Plan, unnecessary divisions of the following counties: Adams, Berks, Carbon, Clinton, Franklin, Lancaster, Lawrence, Montgomery, Northhampton, Perry, Snyder, Somerset, and Washington, or a net of 11 counties, as compared to the Final Plan. Further, the Commission could have eliminated unnecessary divisions of the following municipalities: Darby and Upper Darby Townships.

Objections To The Final Reapportionment Plan

53. 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.

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

55. 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

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

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

58. The Commission failed to demonstrate that the divisions of Upper Darby Township and Darby Township required under the Final Plan were absolutely necessary.

59. The Commission failed to demonstrate that the exclusion of the City of Harrisburg from the 15th Senatorial District required under the Final Plan was absolutely necessary.

60. The Commission acted contrary to law in relocating the 45th Senatorial District to the eastern part of the Commonwealth.

61. The Commission failed to address, consider or adjust the Final Plan to limit the division of political subdivisions to those that were absolutely necessary.

62. 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 Alternative Plan, such considerations were readily

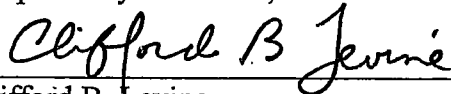
achievable. Thus, numerous divisions among counties and municipalities contained in the Final Plan are not absolutely necessary and could have been eliminated.

Relief Requested

63. 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) Inclusion of all of Upper Darby Township within the same senatorial district;
- b) Inclusion of all of Darby Township within the same senatorial district;
- c) Inclusion of the City of Harrisburg in the 15th Senatorial District;
- d) Movement of the 47th Senatorial District to Monroe County in lieu of the 45th Senatorial District;
- e) Modifications to incorporate the adjustments set forth in the Alternative Plan or to eliminate at least as many unnecessary splits of political subdivisions as set forth in the Alternative Plan, while meeting the other mandated constitutional requirements; and
- f) Prepare any other revisions of the Final Plan that are required to conform to the Constitution.

Respectfully submitted,



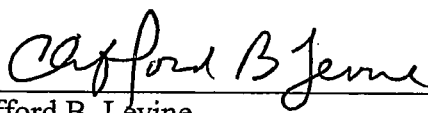
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PETITION FOR REVIEW was served this 10th day of January, 2012, by hand delivery and electronic mail on the following:

Charles E. O'Connor, Executive Director
2011 Legislative Reapportionment Commission
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