

Filed in Supreme Court

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IN THE SUPREME COURT OF PENNSYLVANIA

No. 17 MM 2012

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IN RE: 2011 LEGISLATIVE REAPPORTIONMENT PLAN
FOR THE PENNSYLVANIA HOUSE OF REPRESENTATIVES

CARLOS A. ZAYAS, Petitioner

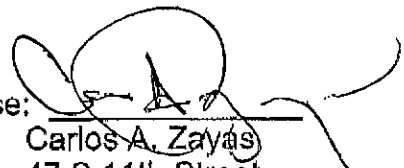
v.

2011 LEGISLATIVE REAPPORTIONMENT COMMISSION, Respondent

BRIEF OF PETITIONER/APELLANT CARLOS A. ZAYAS IN NO. 17 MM 2012 FROM
THE PLAN FOR 2011 PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT

Date: January 23, 2012

Pro se:



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II. Whether the Final Plan of Legislative Reapportionment reduce the opportunity to nominate and elect a candidate of their choice to the majority minority Hispanic/Latino population in the City of Reading, Pennsylvania which 127 Legislative ,District was split with other suburban areas "cracking" the voting power of a minority protected by the Section 2 of the Voting Rights Act of 1965 as ammended?

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TABLE OF CITATIONS

Constitutional / Citations:

Pennsylvania Const. Art. 2, Sections 16 and 17

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Cases:

1. In Re 1991 Pennsylvania Legislative Reapportionment Commission, 530 Pa 335, 609 A2d 132 (1992), cert. denied, 506 U.S. 819 (1992).

2. Baker v Carr, 369 U.S. 186 (1962)

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

4. Karcher v Daggett, 462 U.S.725 (1983)

5. United States v Berks County, 250 F. Supp. 525 (E.D. Pa. 2003)

6. LULAC v Perry, 548 U.S. 399 (2006)

7. Sanchez v Colorado, 97 F. 3d 1303, 1314-15 (10 cir. 1996)

8. Johnson v. De Grandy, 512 U.S. 997 (1994)

Statement of the Question Involved

I. Whether the Final Plan Adopted by the Commission violates Article II, Section 16,17 of the Pennsylvania Constitution and the Equal Protection Clause contain in the 14th Amendment of the United States Constitution necessitating a remand in order that Reapportionment Commission correct the plan?

II. Whether the Final Plan of Legislative Reapportionment reduce the opportunity to nominate and elect a candidate of their choice to the majority minority Hispanic/Latino population in the City of Reading, Pennsylvania which 127 Legislative ,District was split with other suburban areas "cracking" the voting power of a minority protected by the Section 2 of the Voting Rights Act of 1965 as ammended?

History of the case

This is an appeal/petition to review filed by the petitioner Carlos A. Zayas, resident and non partisan voter in the City of Reading, Pennsylvania. Petitioner address is within the 127 Legislative District. The petitioner, as a voting rights activist of the increasing hispanic/latino community in the City of Reading, Pennsylvania is challenging the Final Plan submitted by the 2011 Legislative Reapportionment Commission of the Commonwealth of Pennsylvania. The appeal was filed pursuant to Article II, Section 17 et seq of the Commonwealth of Pennsylvania. The respondent is the 2011 Legislative Reapportionment Commission, a constitutional commission established by Article II, Section 17 of the Pennsylvania Constitution with address is 104 North Office Building, Harrisburg; Pennsylvania 17120-3079.

This Court has exclusive appellate jurisdiction over this petition for review pursuant to Article II (Two), Section 16, 17 of the Pennsylvania Constitution, 42 Pa C. S. A., Section 725 and Pa R.A. P., Rule 3321.

The Legislative Reapportionment Commission on December 12, 2011 filed its final Reapportionment Plan which petitioner wish and expect this Court to review based on the violations of the plan to constitutional and statutory provisions not only of the Pennsylvania Constitution and the United States Constitution, but also violation to Section 2 of the Voting Rights Act of 1965 as amended. The specific determination to be reviewed is the reapportionment of the State Legislative Districts 126 and 127 in Berks County and their impact over the majority of the population in the City of Reading, fragmenting the City and multiple Wards in two Legislative Districts (cracking) and reducing the opportunity of the majority minority hispanic population to elect a candidate of their choice.

The objection to the Reapportionment Plan include that petitioner as a minority, non partisan registered voter is an aggrieved person because the fragmentation or "cracking" of our possibility to elect a candidate of our choice minority had been diminished dramatically by the plan, fragmenting or "cracking" the 127 Legislative District in a way totally different to what historically was; a whole district within the City of Reading. In the previous decade the politicians started the fragmentation of our 127 District and this time the process had **aggravated** the cracking process, diminishing the influence, and the capacity to nominate or elect candidates of their choice by the Hispanic/latino community in a city in which we are the majority of the population (58.16%). This final Plan is contrary to law in that it is contrary to the Equal Protection Clause of the Fourteen Amendment of the United States Constitution, and it is contrary to the "compactness" in reapportionment required by Section 16 of Article II of the Pennsylvania Constitution and contrary to Section 2 of the Federal Voting Rights Act of 1965 as amended, 42 U. S. C., Section 1973 et seq.

Previous to the 2001 Reapportionment, Legislative District 127 was confined to the City of Reading. Then after the demographic explosion of the hispanic community in the City of Reading the politicians moved the 127 District 10% to the suburbs of the Boroughs of West Reading and Kenhorst to maintain a "safe District" in the previous

reapportionment. That move was denounced and challenged without success. Ten years later the hispanic/latino community reach the majority status in the City of Reading with 58.16% of the total population.

The core of our voting strength has been divided between Legislative Districts 126 and 127 remaining the last one as the principal Legislative District within our City. The population covered by the 127 District amount to 61344 city residents in a city with a population of 88082 residents counted by the 2010 U.S. Census. The other 28777 residents covered by the 127 District are from the Borough of Kenhorst, in the suburbs of Reading. The Hispanic/Latino population in the City of Reading is 58.16% of the total population or 51230 residents. The plan of reapportionment for the 127 District consist of 37151 Hispanics/latinos residents or 57.85% of the population in the District. But only 50.6 of the population over 18 years or voting age is Hispanic/latino. This doesn't represent a fair share of our capacity to influence or decide the nomination or election of our candidates of preference. The "pick and choose" operation in choosing which wards to divide in the City (5) and the selection of a suburban municipal vicinity with two districts with 10.45% and 8.44% of Hispanics, reduced dramatically our opportunity to decide the nomination or election of our candidates of choice.

The incumbent has been reelected without opposition for several elections in the 127 District. Everybody recognizes that is a safe district for the incumbent based in the configuration of the District. Only in one occasion one Hispanic contender challenged the actual incumbent. That was about ten years ago.

The previous assertion needs to be put in the context that just during the last decade, the United States Department of Justice needed to file and won a lawsuit in the Eastern District of the Federal District Court in Pennsylvania against the election authorities in the County of Berks in regard voting rights violations across the City of Reading and the 127 Legislative District. A repertoire of voting rights violations had been documented in the case of United States v. Berks County, 250 F. Supp. 2d 525 (E.D. Pa. 2003). This portrayed the difficulties to engage and participate in the elections by the Minority/Majority population.

Relief Sought

Wherefore, petitioner prays the Court:

1. Determine that the final plan of the Legislative Reapportionment Commission is contrary to law under Section 17(d) of Article II of the Pennsylvania Constitution, contrary also to the Equal Protection Clause of the United States Constitution and contrary to the provisions of the Section 2 of the Voting Rights Act of 1965 as amended, 42 U.S. C., 1973 et seq.
2. Remand the Plan to the Reapportionment Commission to Reapportion the legislative districts in a manner not contrary to the requirements of the constitutional provisions and estatutes above mentioned.
3. Acording with the previous statements the petitioner request the Court to remand the Plan to the Commission and grant such further relief as may by just under the

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circumstances, providing any remedy according to law.

Summary of the argument

The Pennsylvania Constitution controls the criteria for redistricting in Article 2, section 16 which 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.

In order to prevail in a challenge to the final Reapportionment Plan, petitioners have the burden of establishing not that there exists an alternative plan which is preferable or better, but rather that the final plan filed by the Reapportionment 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). In the previous case the court recognized that some deviations from the equal population principle are constitutionally permissible with respect to the reapportionment of seats in a state legislature. *Id.*, citing *Reynolds v. Sims*, 377 U.S. 533 (1964).

The 2011 Final Reapportionment Plan failed to take into account the state constitutional requirement of compact and contiguous districts without splitting Wards unless absolutely necessary. To justified going to the suburbs of Reading to get Districts with low density of Hispanics, so many wards within the city were split between the 127 and 126 districts. In the 127 District, five City Wards were split with the 126 District.

Some cases control the present controversy pursuant to the U.S. Constitution. The Equal Protection Clause of the 14th Amendment of the U.S. Constitution mandates that no state shall deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend. XIV, Section 1. The right to vote is one of those fundamental rights entitled to judicial protection under the 14th and 15th amendments. In *Baker v. Carr*, 369 U.S. 186 (1962) the United States Supreme Court held that allegations of a denial of the protection of voting rights presents a justiciable constitutional cause of action.

The one person, one vote principle prohibits the dilution of individual voting power by means of state districting plans that allocate the legislative seats to districts of different populations. *Reynolds v Sims*, 377 U.S. 533 (1964). In *Reynolds* the Supreme Court held that the Equal Protection Clause requires that the seats of both houses of a bi-cameral state legislature must be apportioned on a population basis requiring electoral districts to be of equal population as is practicable.. *Id.* at 577. The Supreme Court has specifically recognized a number of state policies that justified minor deviations from absolute population equality. *Karcher v Daggett*, 462 U.S. 725 (1983).

In a case in which the Court found that only one district violated the Voting Rights Act, the court refused to throw out the entire plan but requires lawmakers to adjust ...districts boundaries in comport with the Court ruling. *LULAC v Perry*, 548 U.S. 399 (2006). The plaintiff is not required to propose an alternative map. But the plaintiff must show that there is a feasible alternative to the defendants map, an alternative that does a better job of balancing the relevant factors, although the fine tuning of the alternative can be left to the remedial stage of the litigation. *Sanchez v Colorado*, 97 F. 3d 1303, 1314-15 (10 cir. 1996)

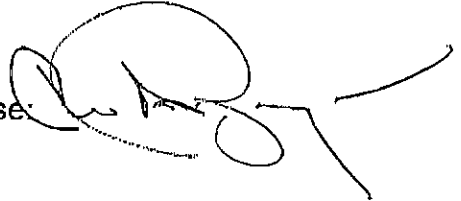
The Court should use total population and voting age population. *Johnson v De Grandy*, 512 U.S. 997, at 1008-09 (1994); 114 S. Ct. at 2655-56. The extend to which members of a protected class have been elected to office in the state or political subdivision is one circumstance which may be considered.

Hispanic voters in the area of the 127 District and parts of the City included in the 126 District constitute a sufficiently compact population and are politically cohesive. The supports and get out to vote when Hispanics/Latinos candidates are campaigning like the two city councilman that had been elected for District 1 of City Council. Most of them are affiliated to the Democratic Party. The 127 District configuration disenfranchised Hispanic voters by permitting a coalition of Whites with African Americans to vote as a bloc to defeat Hispanic-preffered candidates. Plaintiff need only prove the contested practice has a discriminatory effect. Sec 2 Voting Rights Act as amended. 42 U.S.C., Section 1973. The fact that no many candidates from our community risk to challenges the incumbents and the apathy in getting out to vote by others can be inferred that there is the perception that the election system still is not open for them. A violation of subsection (a) of the Section 2 V.R.A. is established if based on the totallity of the circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than others members of the electorate to participate in the political process and to elect representatives of their choice.. *Johnson v. De Grandy* , 512 U.S. 997(1994). One prove is that a geographically compact hispanic majority District could be created. *Clark v. Calhoun County, Miss*, [95-60251] U.S. Ct. App. 5th cir.

The federal courts have also continued to strike down local level plans for failing to create adequate majority-minority districts. See *Teague v. Attala County*, 92 F. 3d 283 (5th cir. Ct. App), *Houston v Lafayette County*, 841 F. Supp. 751,766, 53 F 3d. 606 (N.D. Miss. 1993) See also *Sanchez v Colorado*, supra. In *Sanchez* a Legislative Redistricting plan was struck down because it dit not include a majority-Hispanic district. The single member district did not provide Hispanic voters a fair opportunity to elect candidates of their choice.

Submitted on January 24, 2012.

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I hereby certify that I am this day serving the foregoing document upon the persons and in the maner indicated below, which service satisfies the requirements of Pa R.A.P. 121.

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