

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 14 MM 2022

LISA BOSCOLA, individually and as Senator of the 18th District,
PETITIONER,

v.

2021 LEGISLATIVE REAPPORTIONMENT COMMISSION
OF THE COMMONWEALTH OF PENNSYLVANIA,
RESPONDENT.

BRIEF OF PETITIONER

APPEAL FROM THE FINAL SENATE PLAN ADOPTED
BY THE 2021 LEGISLATIVE REAPPORTIONMENT
COMMISSION, DATED FEBRUARY 4, 2022.

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STATEMENT OF JURISDICTION

The Pennsylvania Supreme Court has exclusive appellate jurisdiction over the Petition for Review in this matter pursuant to Article II, section 17(d) of the Pennsylvania Constitution and the Act of July 9, 1976, P.L. 586, No. 142, effective June 27, 1978 as amended, 42 Pa. C.S. § 725(1). The Petition is addressed to the Court's appellate jurisdiction and is in the nature of a Petition for Review pursuant to Rule 3321 and Rule 1501 et seq. of the Pennsylvania Rules of Appellate Procedure.

STATEMENT OF SCOPE AND STANDARD OF REVIEW

A. Scope of Review

This Honorable Court's scope of review is whether the Final Plan as whole is contrary to law. This entails consideration of all relevant evidence, and legal authority, that a Final Plan is contrary to law. Holt v. Legislative Reapportionment Comm'n; 38 A.3d 711, 733 (Pa. 2012).

B. Standard of Review

A Final Plan may be found to be unconstitutional only if it is established that it is "contrary to law". Id. at 733. The review is *de novo* without deference to the judgment of the agency whose determination is challenged as to the

constitutionality of its actions. The Final Plan approved by the LRC is not entitled to a presumption of constitutionality. Id. at 734.

CONSTITUTIONAL PROVISION

Section 16 of Article II of the Pennsylvania Constitution (“Section 16”)

states in relevant part:

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.... Unless absolutely necessary no county, city incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

DETERMINATION IN QUESTION

The determination in question is the Final 2021 Legislative Reapportionment Plan for the Pennsylvania Senate and House of Representatives (“Final Plan”), adopted at the February 4, 2022 meeting of the 2021 Legislative Reapportionment Commission.

STATEMENT OF THE QUESTION INVOLVED

Whether the Commission’s Final Plan for the Pennsylvania State Senate is contrary to law and must be remanded pursuant to Section 17(d) of Article II of the Pennsylvania Constitution because it divides certain political subdivisions unnecessarily?

STATEMENT OF THE CASE

This Petition challenges the Final Plan adopted by the Pennsylvania Legislative Reapportionment Commission. The Commission was established pursuant to Section 17(a) and (b) of Article II of the Pennsylvania Constitution. It is responsible for preparing preliminary and final reapportionment plans in accordance with Section 17(c) of the Pennsylvania Constitution. The Commission adopted a Preliminary Reapportionment Plan at an administrative meeting held on December 16th, 2021 (the “Preliminary Plan”). In accordance with Section 17(c) of Article II of the Pennsylvania Constitution, any person aggrieved by the Preliminary Plan had 30 days after the filing of the Preliminary Plan (January 16, 2022) to file exceptions with the Commission. Petitioner testified at a Public Hearing on January 7, 2022 wherein the testimony was restricted to 5 minutes. Petitioner submitted written testimony. Additionally, Petitioner timely filed written exceptions to the Preliminary Plan expounding upon her testimony detailing the impact the Preliminary Plan would have on communities of interest that make up the 18th Senatorial district.

The Commission conducted public hearings on April 26, 2021, April 27, 2021, May 26, 2021, June 25, 2021, August 3, 2021 (two hearings), August 4,

2021 (two hearings), September 21, 2021, October 12, 2021, October 25, 2021, November 15, 2021, December 16, 2021 (Preliminary Plan Approved) January 6, 2022 (two hearings), January 7, 2022 (two hearings), January 14, 2022 (two hearings), January 15, 2022 and February 4, 2022 (Final Plan Approved).

SUMMARY OF THE ARGUMENT

The Final Senate Plan approved by the Commission is contrary to law because it unnecessarily divides political subdivisions. This is a direct violation of Article II, Section 16 of the Pennsylvania Constitution. When constructing legislative districts, districts must be compact, contiguous, nearly equitable in population and not divide political subdivisions unless absolutely necessary. Each of these elements deserves equal weight when the LRC creates new legislative districts.

The Final Senate Plan doubles the total number of municipal political subdivision splits in the Commonwealth. Currently, only the cities of Philadelphia and Pittsburgh are split. The Final Senate Plan adds the City of Allentown and South Whitehall Township to the list of divided municipalities. Allentown and South Whitehall are divided due to the placement of the new 14th Senatorial district.

The 14th Senatorial district is now centered in the heart of the Lehigh Valley and represents portions of Lehigh and Northampton County. The LRC created this new district in furtherance of its policy objective of creating “minority influenced districts” in the Commonwealth. This is a noble policy objective. However, it cannot supersede the Constitutional imperative against unnecessarily splitting political subdivisions. If the Final Senate Plan remains it will impact future maps and give implicit approval that constitutional mandates can be ignored by the LRC to further policy goals. Therefore, the Final Senate Plan must be found contrary to law and remanded to better protect the integrity of political subdivisions.

ARGUMENT

The Commission has an obligation to formulate a Final Plan that complies with the law. Holt v. 2011 Legislative Reapportionment Commission, 38 A.3d 711, 738 (Pa. 2012). Article II, Section 16 of the Pennsylvania Constitution requires a legislative map consisting of 50 senatorial seats and 203 representative districts, compact and contiguous, as nearly in equal population as practicable and which do not fragment political subdivisions unless “absolutely necessary”. Until the Holt decision in 2012, this Court held that equality of population in each district was the overriding objective of reapportionment. In Holt, the Court “recalibrated” its governing precedent in reapportionment matters maintaining that

each of the 4 imperatives set forth in Article II Section 16 of the Pennsylvania Constitution is deserving equal weight during reapportionment. Id. at 761. It was the stated hope that such a reset would allow the LRC more flexibility in formulating plans to meet the mandates of contiguity, compactness, population equality while protecting the integrity of political subdivisions. Id. The Holt Court hoped that by recalibrating the emphasis on respecting population equality and placing it on equal footing with the other mandates it would afford the LRC sufficient latitude to avoid many of the complaints that citizens have raised over the years, particularly respecting compactness and divisions of political subdivisions. Id. at 761.

The 2021 LRC is the first Commission selected since the significant changes articulated by the Holt court. While the underlying map in Holt was remanded and the LRC redrew it to meet the concerns articulated by the Court, this LRC is the first one starting fresh under the guidance proffered in Holt. Frankly, the Final Senate Map misses the mark. It does not meet the objectives set forth in Holt as it relates to avoiding unnecessary political subdivisions.

The Final Senate Plan doubles the number of municipalities split from the current map. Today, the City of Philadelphia (population approximately 1.6 million) and City of Pittsburgh (population 303,694) are the only municipalities split in Senate Maps. The Final Senate Plan proposes splitting the City of

Allentown (population 126,364), a city less than one tenth the size of Philadelphia and 40% the size of Pittsburgh and South Whitehall Township (population 21,080) a municipality a little over 1% the size of Philadelphia and 6% the size of Pittsburgh. As Justice Eakin noted in his concurring and dissenting opinion in Holt,... “If you change one line, it causes ripples that necessitate change elsewhere”. Holt 38 A.3d at 763. That is exactly what happened with the Final Senate Plan. With the split of Allentown and South Whitehall Township, the Commission introduced the 14th Senatorial district into the heart of the Lehigh Valley proposing to move it from the northeast region of the Commonwealth.

Petitioner acknowledges this Court’s reluctance to entertain local challenges as sufficient grounds to hold a Final Plan contrary to law. A position announced in the Albert case and reaffirmed in Holt. Albert v. 2001 Legislative Reapportionment Comm’n 790 A.2d 989 (Pa. 2002). Holt 38 A.3d 711. (For the record, Petitioner was one of the local challenges to the LRC’s shenanigans in the 2001 reapportionment process that Justice Saylor noted in Albert “tested the outer limits.” Albert 790 A.2d at 1000). Petitioner believes however that the challenge set forth herein is distinguishable from the type of local challenges the Court routinely dismissed in past reapportionment challenges.

The unneeded split of Allentown, the Commonwealths’ third largest City, and South Whitehall Township is obvious. The unnecessary splits combined with

the insertion of 14th Senatorial district infects the whole Final Plan, creating a hole in the map. In the Preliminary Plan, the Commission proposed splitting the cities of Allentown and Bethlehem and placing a portion of each in a newly drawn 14th District in an effort to create a “minority influenced district”. Between the Preliminary and Final Plan the Commission swapped out the split of the City of Bethlehem with a split of South Whitehall Township in furtherance of the stated policy goal, not out of necessity. Allowing this Final Senate Map and its obvious unnecessary splits in the Final Senate Plan turns the recalibration laid out in Holt on its head because equal deference must be given to the four elements outlined in Section 16 of Article II.

There is no need to split either Allentown or South Whitehall to create a Final Plan. The Lehigh Valley is made up of two counties, Lehigh and Northampton. Today, the area is represented by three Senate seats the 16th (Lehigh County), the 18th (Lehigh and Northampton County) and the 40th (Northampton and Monroe County). In the current Senate map no municipalities are split and only 5 school districts are split. In the 2021 Final Senate Plan two municipalities are split and 6 school districts are split. Petitioner provided multiple maps to the LRC that demonstrated more respect for long standing communities of interest in the 16th, 18th and 40th districts that kept all the municipalities intact. There was no

need to introduce the 14th Senatorial district into the center of the Lehigh Valley but for splitting Allentown and South Whitehall.

The stated policy goal of the LRC to create “minority influenced districts” in the 14th district and elsewhere in the Commonwealth is laudable. News accounts throughout the process indicate that such districts could be created in a Senate plan without violence to the integrity of these municipalities. While Petitioner supports the objective, such consideration should not come at the expense of existing communities of interest or disregard of constitutional mandates. Should desired policy goals of the LRC trump the constitutional imperative of avoiding “unnecessary” splits of cities and townships during reapportionment is really what is at issue before this Court. There really can be no debate that the Final Senate Plan can be drawn without the splitting of Allentown and South Whitehall Township and the 14th Senatorial district would not be moved to the Lehigh Valley. In her testimony and written exceptions to the Preliminary Plan, Petitioner noted that the plan of the LRC carved up communities of interest in the 18th district including at the time splitting the City of Bethlehem. While the Final Plan kept the City of Bethlehem whole, it still removes 7 municipalities equating to about 59,000 people from the 18th district that have been part of the district for two decades.

The 18th district is no stranger to the impacts of the political shenanigans that play out in the redistricting process. Since 1991 the 18th District has consisted

of 44 different municipalities, only 5 have remained constant. As Petitioner remarked in her testimony just naming some of the larger areas: “Parts of Monroe County in, parts of Monroe County out, Northern Northampton County (locally known as the Slate belt) in, Slate belt out, slate belt back in, Nazareth in, Nazareth out, Nazareth in, Easton (the County seat) in, Easton out, Easton back in, Whitehall out, Whitehall in, Whitehall out.” *Hearing on January 7, 2022 Before the 2021 Pennsylvania Redistricting Commission* (testimony of Senator Lisa M. Boscola)¹. The most obnoxious redistricting political gamesmanship to the 18th district occurred in 2001, when the City of Easton, the Northampton County seat and a few of its surrounding municipalities were drawn out of the 18th district and placed into a Montgomery County based district.

It is inevitable that approved Final Plans impact the next one. Allowing this Final Senate Plan to stand with its obvious unnecessary splits will set a precedent for the next final plan and the next one, giving an endorsement that policy considerations of a LRC can supplant the constitutional imperative against unneeded political subdivision splits. Surely, the decision in Holt did not envision such latitude for future LRC’s to allow its own policy considerations to override Constitutional mandates.

¹ See Petitioner’s Petition for Review: Exhibit C

CONCLUSION

The Final Senate Plan as a whole is contrary to law because it contains more splits of municipalities than is necessary. The communities that make up the 18th Senatorial district bear the brunt of the LRC flouting constitutional mandates in favor of its own policy initiatives. Petitioner respectfully requests this Honorable Court remand the Final Plan to the LRC with further guidance as to when political subdivisions may be split.

Respectfully submitted,


Joseph M. Kelly, Esquire
(PA #85844)

/s/ Seth Rolko, Esquire
(PA #329920)

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2022, I caused a true and correct copy of the Brief of Petitioner to be served pursuant to Pa. R.A.P. 121 as follows:

Via United States Certified Mail and PACFile:

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/s/ Joseph M. Kelly, Esquire

/s/ Seth Rolko, Esquire

Dated: March 4, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

Petitioners

By Counsel:

/s/ Joseph M. Kelly, Esquire
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/s/ Seth Rolko, Esquire
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