

**[J-2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 31-2012] [M.O. - CASTILLE, C.J.]
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, TIMOTHY F. BURNETT, CHRIS : Appeal from the Legislative
HERTZOG, GLEN ECKHART, and MARY : Reapportionment Plan of the 2011
FRANCES BALLARD, : Legislative Reapportionment
Appellants : Commission, dated December 12, 2011

v.

ARGUED: January 23, 2012

2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION, :

Appellee

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

Appellants

v.

ARGUED: January 23, 2012

2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION, :

Appellee

MAYOR CAROLYN COMITTA, COUNCIL : No. 2 MM 2012
PRESIDENT HOLLY BROWN, WILLIAM J. :
SCOTT, JR., HERBERT A. SCHWABE, II, :
JANE HEALD CLOSE, FLOYD ROBERT :
BIELSKI, DAVID LALEIKE, E. BRIAN : Appeal from the Legislative
ABBOTT, NATHANIEL SMITH, and W. : Reapportionment Plan of the 2011
DONALD BRACELAND, : Legislative Reapportionment
Appellants : Commission, dated December 12, 2011

v. : ARGUED: January 23, 2012

2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION, :

Appellee

MAYOR LEO SCODA and COUNCIL : No. 3 MM 2012
PERSON JENNIFER MAYO, :

Appellants

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

2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION, :

Appellee

ARGUED: January 23, 2012

THOMAS SCHIFFER, ALISON BAUSMAN, : No. 4 MM 2012
RACHEL J. AMDUR, JOAN TARKA, :
LAWRENCE W. ABEL, MARGARET G. :
MORSHECK, LAWRENCE J. CHRZAN, :
JULIA SCHULTZ and SHIRLEY RESNICK, :

Appellants

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

2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION, :

Appellee

ARGUED: January 23, 2012

<p>SEKELA COLES, CYNTHIA JACKSON and LEE TALIAFERRO,</p> <p style="text-align: center;">Appellants</p> <p style="text-align: center;">v.</p> <p>2011 LEGISLATIVE REAPPORTIONMENT COMMISSION,</p> <p style="text-align: center;">Appellee</p>	<p>No. 5 MM 2012</p> <p>Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011</p> <p>SUBMITTED: January 23, 2012</p>
<p>PATTY KIM,</p> <p style="text-align: center;">Appellant</p> <p style="text-align: center;">v.</p> <p>2011 LEGISLATIVE REAPPORTIONMENT COMMISSION,</p> <p style="text-align: center;">Appellee</p>	<p>No. 6 MM 2012</p> <p>Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011</p> <p>ARGUED: January 23, 2012</p>
<p>EDWARD J. BRADLEY, JR., PATRICK MCKENNA, JR., DOROTHY GALLAGHER, RICHARD H. LOWE, and JOHN F. "JACK" BYRNE,</p> <p style="text-align: center;">Appellants</p> <p style="text-align: center;">v.</p> <p>2011 LEGISLATIVE REAPPORTIONMENT COMMISSION,</p> <p style="text-align: center;">Appellee</p>	<p>No. 8 MM 2012</p> <p>Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011</p> <p>ARGUED: January 23, 2012</p>
<p>DENNIS J. BAYLOR,</p> <p style="text-align: center;">Appellant</p> <p style="text-align: center;">v.</p> <p>2011 LEGISLATIVE REAPPORTIONMENT COMMISSION,</p> <p style="text-align: center;">Appellee</p>	<p>No. 9 MM 2012</p> <p>Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011</p> <p>ARGUED: January 23, 2012</p>

<p>ANDREW DOMINICK ALOSI, Appellant</p>	<p>No. 10 MM 2012</p>
v.	<p>Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011</p>
<p>2011 LEGISLATIVE REAPPORTIONMENT COMMISSION, Appellee</p>	<p>SUBMITTED: January 23, 2012</p>
<p>CARLOS A. ZAYAS, Appellant</p>	<p>No. 17 MM 2012</p>
v.	<p>Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011</p>
<p>2011 LEGISLATIVE REAPPORTIONMENT COMMISSION, Appellee</p>	<p>SUBMITTED: January 24, 2012</p>
<p>WILLIAM C. KORTZ, MICHELLE L. VEZZANI, MICHAEL E. CHEREPKO, GREGORY EROSENKO, JOYCE POPOVICH, JOHN BEVEC, LISA BASHIOUM, and RICHARD CHRISTOPHER, Appellants</p>	<p>No. 4 WM 2012</p> <p>Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011</p>
v.	<p>ARGUED: January 23, 2012</p>
<p>2011 LEGISLATIVE REAPPORTIONMENT COMMISSION, Appellee</p>	<p></p>

CONCURRING AND DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: January 25, 2012
OPINION FILED: February 3, 2012

I join much of the majority opinion. However, I do not find the Legislative Reapportionment Commission (LRC) plan to be contrary to the Constitution, and I join in full the expressions of Justice Saylor in that regard.

The process of redistricting is complex beyond words. The need to consider all the factors necessary – contiguousness, compactness, equality of population, respecting political subdivisions down to the ward level, avoiding disenfranchising racial and ethnic groups, the federal Voting Rights Act – makes this a daunting task for the LRC. The result of changing any one area of its plan was aptly likened by counsel to squeezing a water balloon: if you squeeze it here, it will bulge over there. If you change one line, it causes ripples that necessitate changes elsewhere.

An inherent problem in reviewing challenges to the ultimate plan is that no mechanism exists for the LRC to justify or explain its considerations or decisions. For better or worse, there are no means for it to explain individual lines or boundaries. It is never “absolutely necessary” to draw a line in any spot – it could always go elsewhere, but there is no process articulating what considerations were behind the decision to put it where the LRC did.

Since there is no record, we cannot tell why the LRC did what it did. This is a problem for both those who would challenge the plan and for those of us who must evaluate those challenges. For example, the “Holt plan” was not adopted by the LRC, but we do not know what consideration it received. We can surmise reasons it was not enacted, but this is mere conjecture.

It is entirely possible that this plan, lovely on its surface, is not so beautiful when examined in depth – on the other hand, it may be a masterpiece. We do not know and are not possessed of the means to make such an evaluation, particularly given the time constraints cogently detailed in the majority’s opinion.

The bottom line is that we do not know whether the Holt plan, or any other plan, proves anything other than that it is possible to divide fewer political subdivisions. This in my judgment does not prove the LRC plan is unconstitutional. The bipartisan LRC, however, has the time, the means, and indeed the mandate to consider all options, and I would give it significant deference. Given that deference, the burden on challengers is indeed heavy and, in my judgment, has not been met in this case.

The 2011 plan has fewer problems than the plan we found constitutional in Albert; it is not unconstitutional under existing precedent. While I do not quarrel with the majority’s reordering of constitutional priorities, I do not find a need to make that reordering retroactive.

Redistricting is required to ensure constitutional representation of all voters, reflecting population changes that occur over a decade. Computers or not, drawing a new plan using new rules will not happen in time for this year’s elections. Changing the rules and rejecting the otherwise constitutional plan subjects our citizens to continued unbalanced representation. I find this result unnecessary.

As such, I cannot join the order rejecting the 2011 Legislative Reapportionment Plan.