

IN THE SUPREME COURT OF PENNSYLVANIA

AMANDA E. HOLT, ELAINE TOMLIN, :
LOUIS NUDI, DIANE EDBRIL, DARIEL I. :
JAMIESON, LORA LAVIN, JAMES YOEST, :
JEFFREY MEYER, CHRISTOPHER H. :
FROMME, TIMOTHY F. BURNETT, CHRIS :
HERTZOG, GLEN ECKHART, AND MARY :
FRANCES BALLARD :
 :
Petitioners, :
 :
 :
v. : No.
 :
 : Misc. Docket _____
2011 LEGISLATIVE REAPPORTIONMENT :
COMMISSION OF THE COMMONWEALTH :
OF PENNSYLVANIA, :
 :
 :
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 Rules of Appellate Procedure 3321 and 1501 *et seq.*, Petitioners Amanda E.
Holt, Elaine Tomlin, Louis Nudi, Diane Edbril, Dariel I. Jamieson, Lora Lavin, James
Yoest, Jeffrey Meyer, Christopher H. Fromme, Timothy F. Burnett, Chris Hertzog, Glenn
Eckhart, and Mary Frances Ballard (collectively, “Petitioners”), as individual voters in
the Commonwealth of Pennsylvania, through undersigned counsel Hogan Lovells US
LLP and the Public Interest Law Center of Philadelphia, file this Petition for Review of
the Final 2011 Legislative Reapportionment Plan (the “Final Plan”) adopted by the 2011

Legislative Reapportionment Commission of the Commonwealth of Pennsylvania on the grounds that the Final Plan unconstitutionally splits hundreds of political subdivisions of the Commonwealth—in violation of the express requirement of Section 16, Article 2 that *no* subdivisions be split “*unless absolutely necessary.*” In fact, the Final Plan violates Section 16 on a state-wide basis by making 453 *more* subdivision splits for the House and 93 *more* subdivision splits for the Senate than the number of splits which are “absolutely necessary.” The Plan thus deprives voters in the Commonwealth of their right to select their legislative representatives in the manner provided by the Constitution. In support of their request for remand and relief, the Petitioners state as follows:

STATEMENT OF JURISDICTION

1. This Court has exclusive appellate jurisdiction over this Petition pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution and 42 Pa.C.S. §725(1). This 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.

PETITIONERS

2. Petitioner Amanda E. Holt resides at 124 Bastian Lane, Allentown 18104, Lehigh County, Pennsylvania. Ms. Holt is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Lehigh County, in which Ms. Holt resides, would be divided into eight House of Representative Districts

and three Senatorial Districts, in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

3. Petitioner Elaine Tomlin resides at 4831 North Fifth Street, Philadelphia 19120, Philadelphia County, Pennsylvania. Ms. Tomlin is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Philadelphia Ward 42, in which Ms. Tomlin resides, would be divided into two Senate Districts and five House of Representative Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

4. Petitioner Louis Nudi resides at 322 Maple Road, Pittsburgh 15237, Allegheny County, Pennsylvania. Mr. Nudi is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Ross Township, in which Mr. Nudi resides, would be divided into two House of Representative Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

5. Petitioner Diane Edbril resides at resides at 205 Spruce Tree Road, Radnor 19087, Delaware County, Pennsylvania. Ms. Edbril is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Radnor Township, in which Ms. Edbril resides, would be divided into two House of Representative Districts and Delaware County into four Senate Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

6. Petitioner Dariel I. Jamieson resides at 200 Lafayette Lane, Chesterbrook 19087, Chester County, Pennsylvania. Mr. Jamieson is a registered voter of the

Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Chester County, in which Mr. Jamieson resides, would be divided into four Senate Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

7. Petitioner Lora Lavin resides at 15 Wellesley Road, Swarthmore 19081, Delaware County, Pennsylvania. Ms. Lavin is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Delaware County, in which Ms. Lavin resides, would be divided into four Senate Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution. Under the Final Plan, Swarthmore Borough, in which Ms. Lavin resides, would be divided into two House of Representative Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

8. Petitioner James Yoest resides at 410 Englewood Drive, Pittsburgh 15237, Allegheny County, Pennsylvania. Mr. Yoest is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Ross Township, in which Mr. Yoest resides, would be divided into two House of Representative Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

9. Petitioner Jeffrey Meyer resides at 492 Woodland Road, Pittsburgh 15237, Allegheny County, Pennsylvania. Mr. Meyer is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Ross Township, in which Mr. Meyer resides, would be divided into two House of

Representative Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

10. Petitioner Christopher H. Fromme resides at 113 Pittview Road, Pittsburgh 15237, Allegheny County, Pennsylvania. Mr. Fromme is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Ross Township, in which Mr. Fromme resides, would be divided into two House of Representative Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

11. Petitioner Timothy F. Burnett resides at 115 Heidcrest Drive, Pittsburgh 15237, Allegheny County, Pennsylvania. Mr. Burnett is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Ross Township, in which Mr. Burnett resides, would be divided into two House of Representative Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

12. Petitioner Chris Hertzog resides at 5163 Egypt Road, Coply 18037, Lehigh County, Pennsylvania. Mr. Hertzog is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, North Whithall Township, in which Mr. Hertzog resides, would be divided into eight House of Representative Districts, and Lehigh County would be divided into three Senate Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

13. Petitioner Glenn Eckhart resides at 511 E Federal St., Allentown 18103-5209, Lehigh County, Pennsylvania. Mr. Eckhart is a registered voter of the

Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Salisbury Township, in which Mr. Eckhart resides, would be divided into three House of Representatives Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution. Under the Final Plan, Lehigh County, in which Mr. Eckhart resides, would be divided into eight House of Representatives Districts and three Senate Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

14. Petitioner Mary Frances Ballard resides at 411 LouElla Drive, Wayne 19087, Delaware County, Pennsylvania. Ms. Ballard is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Radnor Township, in which Ms. Ballard resides, would be divided into two House of Representative Districts and Delaware County into four Senate Districts in violation of Section 16 of Article 2 of the Pennsylvania Constitution.

15. Petitioners, as registered voters in the Commonwealth of Pennsylvania and aggrieved persons, have standing to seek this Court's review of the entire Final Plan. *See* Pennsylvania Const., Art. 2., § 17(d); *Albert v. 2001 Legislative Reapportionment Com'n*, 567 Pa. 670, 679 (2002).

RESPONDENT

16. Respondent, the 2011 Legislative Reapportionment Commission of the Commonwealth of Pennsylvania (the "Commission"), was established pursuant to Sections 17(a) and (b) of Article 2 of the Pennsylvania Constitution, and is charged with the responsibility for preparing preliminary and final reapportionment plans in

accordance with Section 17(c) of such article. Respondent's address is North Office Building, Room 104, Harrisburg 17120, Pennsylvania.

CONTROLLING CONSTITUTIONAL PROVISION

17. Section 16 of Article 2 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 SOUGHT TO BE REVIEWED

18. Petitioners seek review of the Final Plan, adopted on December 12, 2011. True and correct copies of the Final Plan for the Pennsylvania Senate and House of Representatives are attached as Exhibits A and B, respectively.

19. Pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution, this Court must review the Final Plan to determine whether it is "contrary to law."

PROCEDURAL BACKGROUND

20. The Commission adopted a Preliminary Reapportionment Plan at an administrative meeting held on October 31, 2011 (the "Preliminary Plan"). Under Section 17(c) of Article 2 the Pennsylvania Constitution, any person aggrieved by the Preliminary Plan had 30 days after the filing of the Preliminary Plan, or until November 30, 2011, to file exceptions with the Commission.

21. The Commission conducted public hearings on September 7, 2011, September 14, 2011, November 18, 2011, and November 23, 2011. The Commission held public administrative meetings on October 31, 2011, December 7, 2011, and December 12, 2011, at which it adopted the Final Plan.

22. The exceptions to the Preliminary Plan, on which this Petition is based, were timely filed on or before November 30, 2011. None of those exceptions were addressed in the Final Plan.

GENERAL STATEMENT OF OBJECTIONS TO THE DETERMINATION

23. The Final Plan is contrary to law and must be remanded pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution, because it violates Section 16 of Article 2. Section 16 provides in pertinent 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.

24. The prohibition on splitting subdivisions “unless absolutely necessary” is unambiguous and must be enforced in accordance with its plain and ordinary meaning. *Jubelirer v. Rendell*, 598 Pa. 16, 39 (Pa. 2008). While there is no need to look behind the plain language of this prohibition, the reasons for the prohibition are self-evident. As the record before the Commission reflects, the proliferation of unnecessary subdivision splits undermines the ability of the voters in a subdivision to secure meaningful and effective

legislative representation with respect to the interest and concerns of importance to that subdivision.

25. Despite the unmistakably clear language and purpose of Section 16, the Final Plan violates that section on a pervasive, state-wide basis. Rather than splitting subdivisions only when “absolutely necessary,” the Final Plan needlessly creates hundreds of divided counties, cities, incorporated towns, boroughs, townships and wards. These splits are not “absolutely necessary,” or even marginally necessary, to achieve any constitutionally valid objective of the Commission, because the same level of population equality, compactness and contiguity can be readily achieved while reducing both the number of places split, and the number of splits, in both houses by more than 50 percent.

26. The Final Plan also violates Section 16 on a state-wide basis by failing to offer any “specific explanation for why the constitutional prerequisites of compactness and respect for political subdivisions cannot be accommodated simultaneous with the maintenance of substantial equality of population and enforcement of voting interests of protected groups in the manner prescribed by federal law.” *Albert v. 2001 Legislative Reapportionment Com’n*, 567 Pa. 670, 688 (2002) (Saylor, J., concurring; joined by Castille, J., and Eakin, J.).

The Final Plan Violates Section 16(b)’s Prohibition on Dividing Political Subdivisions “Unless Absolutely Necessary”

27. This Court’s precedent, including *Albert v. 2001 Legislative Reapportionment Com’n*, 567 Pa. 670 (2002), make clear that compliance with Section 16 requires a balance between “the overriding objective of substantial equality in

population among districts,” “concerns for compactness and adherence to a political subdivision line,” and compliance with federal voting requirements. *Id.*, 567 Pa. at 677. Determining whether a plan complies with the Section 16 and federal requirements requires analysis of the plan “as a whole.” *Id.* at 685.

28. The following table, generated using the data attached hereto at Exhibit F, shows a comparison between the total number of subdivision splits and split subdivisions under the Final Plan, and the total number of subdivision splits and split subdivisions that would have resulted if the Commission had prepared a plan in strict compliance with the requirements of Section 16 while maintaining the same level of population equality:

<u>HOUSE</u>	<u>Final Plan</u>	<u>Section 16 Plan</u>	<u>Difference</u>
Split Counties	52	45	7
Split Municipalities	108	27	81
Split Wards	130	34	96
Total Split Subdivisions	290	106	184
Total County Splits	268	229	39
Total Municipal Splits	270	84	186
Total Ward Splits	299	71	228
Total Subdivision Splits	837	384	453
<u>SENATE</u>	<u>Final Plan</u>	<u>Section 16 Plan</u>	<u>Difference</u>
Split Counties	28	21	7
Split Municipalities	4	2	2
Split Wards	26	4	22
Total Split Subdivisions	58	27	31
Total County Splits	95	58	37
Total Municipal Splits	14	8	6
Total Ward Splits	58	8	50
Total Subdivision Splits	167	74	93

29. To analyze the Final Plan as a whole, Petitioners compared that plan to a state-wide plan designed exclusively to satisfy the objectives of Section 16 and federal law (the “Section 16 Plan”), without regard to any objectives that fall outside the scope of those constitutional requirements, such as enhancement of partisan voting power in a particular district, preservation of incumbency, and the like. The Section 16 Plan was created through the following steps:

a. The Pennsylvania Constitution divides the Commonwealth into 50 senatorial districts and 203 representative districts. Based upon the 2010 census, the population of Pennsylvania is 12,702,379. The ideal population of each senatorial district would be 254,048; the ideal population of each house district would be 62,573. The total range of deviation from the ideal population is 3.89 % in the Senate and 5.98% in the House Final Plans.

b. With the goal of keeping the same ideal population deviation range as the Final Plan, Petitioner Holt began with the counties and moved to smaller subdivisions, and divided each subdivision population by the ideal district population state-wide to determine the total number of senatorial and representative districts to which each subdivision is entitled based on voting equality requirements. Subdivisions within the Final Plan deviation from strict voting equality were kept intact. Subdivisions that exceed the population equality deviation were either combined with other subdivisions or split along the lines of existing interior subdivisions to maintain voting equality.

c. After creating state-wide senatorial and representative district maps that achieve voting equality with the least possible splitting of subdivisions, adjustments were made as necessary to ensure compliance with the Voting Rights Act (“VRA”), 42 U.S.C. §1973. This step resulted in combining or splitting additional subdivisions, but only to the extent necessary to achieve VRA compliance.

d. As a result of the process followed in preparing the Section 16 Plan, all criteria used in establishing district boundaries are objective, transparent, readily verifiable, and based solely on the Pennsylvania Constitution or federal law. The spreadsheet attached hereto as Exhibit F sets forth the specific reason why each subdivision split under the Section 16 Plan was absolutely necessary.

30. Petitioner Holt presented an original Section 16 Plan to the Commission on November 18, 2011, and presented a modified Section 16 Plan on November 30, 2011. True and correct copies of these plans are attached hereto as Exhibits C and D, respectively.¹ Attached hereto as Exhibit E is an Amended Section 16 Plan, which makes additional adjustments to eliminate the split of Lower Makefield Township, modify several district numbers, and reduce the size of one district to meet strict VRA requirements. The Amended Section 16 Plan does not alter the total number of subdivision splits in the prior Section 16 Plans. Attached hereto as Exhibit G are spreadsheets setting forth relevant population and voting equality data with respect to the Amended Section 16 Plan.

¹ Exhibits C and D are documents entitled “Legislative Reapportionment Exceptions and Proposed Solutions.” The original/modified Section 16 Plan contained therein is also referred to as the “Holt Proposal.”

31. Comparison of the Amended Section 16 Plan to the Final Plan illustrates the extent to which — *on a state-wide basis* — the Final Plan falls short of Section 16’s express requirement to preserve subdivision boundaries. Indeed, the Final Plan creates *hundreds* of subdivision splits that are not “absolutely necessary” to meet any objective based on the Pennsylvania Constitution or federal law. The Final Plan unnecessarily splits many of these subdivisions multiple times. As a result, the total number of unnecessary subdivision *splits* under the Final Plan is greater than the total number of *subdivisions* affected by those unnecessary splits. Specifically, as set forth in the spreadsheets attached as Exhibit F:

a. The Final Plan for the House created a total of 837 subdivision splits, 453 more than the number of subdivision splits which were “absolutely necessary” under Section 16. The number of subdivisions split by the Final Plan for the House totaled 290, 184 more subdivisions than would have been split if the Final Plan complied with Section 16.

b. The Final Plan for the Senate created a total of 167 subdivision splits, 93 more than the number of subdivision splits that were “absolutely necessary” under Section 16. The number of subdivisions split by the Final Plan for the Senate totaled 58—31 more subdivisions than would have been split if the Final Plan complied with Section 16.

32. The hundreds of additional splits called for by the Final Plan cannot be explained by any constitutionally valid objective under Section 16. Those additional splits cannot be justified by a desire to improve voting equality, because the overall

voting equality deviations are essentially the same, if not better, in the Amended Section 16 Plan as compared with the Final Plan. The Final Plan has deviations of 3.89% in the Senate and 5.98% in the House, while the Amended Section 16 Plan has deviations of 3.471% in the Senate and 5.872% in the House.

33. The additional splits under the Final Plan also cannot be justified by VRA considerations. The Final Plan includes 14 minority-majority districts. The Amended Section 16 Plan creates 19, with far fewer subdivision splits by preserving wards that the Final Plan needlessly divides.

34. The divisions under the Final Plan cannot be justified by compactness or contiguousness. For the Senate, the compactness or contiguousness of the Final Plan are no greater than, and are arguably less than, that of the Amended Section 16 Plan. For the House, the Final Plan creates seven non-contiguous districts for the House, while the Amended Section 16 Plan creates just one.

35. The Commission's apparent desire to limit the number of changes to the voting districts established in 2001 also cannot justify its violation of Section 16's mandate to preserve political subdivisions. As this Court noted in *Albert*, the "continuation of the pre-existing legislative districts" should not be a significant factor in evaluating a reapportionment plan. 567 Pa. at 686-687. Under Section 17(a) of Article 2, the Commission is created for the express purpose of "*reapportioning the Commonwealth*," not for the purpose of preserving existing districts or accommodating the residence of incumbents.

36. The excessive number of subdivision splits also cannot be justified on the theory that the total numbers of splits are in line with the total numbers of splits under the 2001 reapportionment plan that this Court approved in *Albert*. The *Albert* decision made clear that it had *not* been presented with a meaningful challenge to the Commission's plan "as a whole." In fact, no prior decision of this Court compares a plan proposed by the Commission to a state-wide plan developed solely on the basis of Section 16 considerations.

37. There are many individual examples of unnecessary subdivision splits in the Final Plan which confirm that the Commission failed to follow the clear dictates of Section 16. For example, the Final Plan for the House split numerous subdivisions whose populations were *smaller* than the ideal House district population and therefore should not have been split at all, because no valid countervailing considerations necessitated a split. Among *many* other examples:

a. The Final Plan split Lower Merion, Montgomery County into *four* House Districts even though it is only a -7.59% deviation from an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *four*.

b. The Final Plan split Philadelphia Ward 42 into *five* House Districts even though it is only 52.26% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *five*.

c. The Final Plan split Philadelphia Ward 49 into *five* House Districts even though it is only 39.19% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *five*.

d. The Final Plan split Philadelphia Ward 54 into *four* House Districts even though it is only 38.16% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *four*.

e. The Final Plan split Philadelphia Ward 64 into *four* House Districts even though it is only 27.55% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *four*.

f. The Final Plan split Pottstown (in Montgomery County) into *three* House Districts even though it is only 35.76% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

g. The Final Plan split Swatara (in Dauphin County) into *three* House Districts even though it is only 37.34% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

h. The Final Plan split Unity (in Westmoreland County) into *three* House Districts even though it is only 36.13% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

i. The Final Plan split Salisbury (in Lehigh County) into *three* House Districts even though it is only 21.58% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

j. The Final Plan split South Whitehall (in Lehigh County) into *three* House Districts even though it is only 30.65% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

38. The Final Plan for the Senate has many similar examples of subdivision splits that are completely unnecessary. Among *many* other examples:

a. The Final Plan split Philadelphia Ward 18 into *three* Senate Districts even though it is only 5.75% of an ideal Senate district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

b. The Final Plan split Philadelphia Ward 21 into *three* Senate Districts even though it is only 17.44% of an ideal Senate district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

c. The Final Plan split Carbon into *two* Senate Districts even though it is only 25.68% of an ideal Senate district population. There are no equal population, VRA or other requirements that justified this split.

d. The Final Plan split Adams County into *three* Senate Districts even though it is only 39.92% of an ideal Senate district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

e. The Final Plan split Butler County into *three* Senate Districts even though it is only a -27.63% deviation from the ideal Senate district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

f. The Final Plan split Washington County into *three* Senate Districts even though it is only a -18.20% deviation from the ideal Senate district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

39. For all the reasons discussed above, analysis of the Final Plan *as a whole* establishes that the Commission acted contrary to law by creating hundreds of subdivision splits that are not “absolutely necessary.” Accordingly, the Final Plan must be remanded.

The Commission Acted Contrary to Law by Failing to Offer any “Specific Explanation” for the Excessive Number of Subdivision Splits under its Plan

40. The concurring opinion in *Albert* expressed the view that, where a reapportionment plan creates a large number of subdivision splits that cannot be explained by the requirements of Section 16 or federal voting requirements, the Commission should explain itself. In particular, it should offer—

some specific explanation for why the constitutional prerequisites of compactness and respect for political subdivisions cannot be accommodated simultaneous with the maintenance of substantial equality of population and enforcement of voting interests of protected groups in the manner prescribed by federal law.

Id., 567 Pa. at 688 (Saylor, J., concurring; joined by Castille, J., and Eakin, J.) (italics added).

41. Here, the Commission has failed to offer and cannot offer *any* explanation, much less a “specific explanation,” that would satisfy the straightforward requirement proposed by the *Albert* concurrence. No such explanation can be provided because the Amended Section 16 Plan demonstrates, for the reasons discussed above, that “the constitutional prerequisites of compactness and respect for political subdivisions” *can* “be accommodated simultaneous with the maintenance of substantial equality of population and enforcement of voting interests of protected groups in the manner prescribed by federal law.”

42. The Commission’s inability to provide the “specific explanation” called for by the *Albert* concurrence by itself requires remand in this case for two reasons. First, as discussed above, the Section 16 Plan submitted to the Commission prior to its adoption of the Final Plan constituted “concrete [and] objective data” demonstrating that it is possible to simultaneously achieve all constitutionally valid objectives of the Commission. *See Com. ex rel. Specter v. Levin*, 293 A.2d 15, 24 (Pa. 1972). The Commission’s decision to wholly disregard that data is arbitrary and therefore contrary to law.

43. Second, as discussed in paragraphs 35 and 36 above, the Final Plan is replete with examples of subdivision splits that serve no constitutionally valid purpose and therefore are contrary to Section 16’s prohibition on splits that are not “absolutely necessary.”

44. Under these circumstances, where concrete and objective data demonstrate that the objectives of Section 16 and federal voting requirements are simultaneously achievable on a state-wide basis, yet the Commission flouts the “*constitutional*

prerequisites of compactness and respect for political subdivisions” and offers no “specific explanation” for its failure to honor those prerequisites, the Commission plainly has acted contrary to law. Its decision must be reversed, and the matter remanded for preparation of a new reapportionment plan that meets Section 16’s clear requirements.

RELIEF SOUGHT

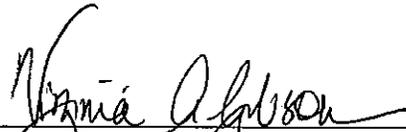
WHEREFORE, petitioner prays the Court:

- a) Determine that the Final Plan is contrary to law under Section 17(d) of Article 2 of the Pennsylvania Constitution;
- b) Remand the Final Plan to the Commission and direct the Commission, pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution, to (a) reapportion the legislative districts of the Commonwealth in a manner that avoids any subdivision split that is not absolutely necessary; and (b) to provide a specific explanation of any continued deviation from the requirements of Section 16 of Article 2 of the Pennsylvania Constitution; and
- c) Grant such further relief as may be just under the circumstances.

- b) Remand the Final Plan to the Commission and direct the Commission, pursuant to Section 17(d) of Article 2 of the Pennsylvania Constitution, to (a) reapportion the legislative districts of the Commonwealth in a manner that avoids any subdivision split that is not absolutely necessary; and (b) to provide a specific explanation of any continued deviation from the requirements of Section 16 of Article 2 of the Pennsylvania Constitution; and
- c) Grant such further relief as may be just under the circumstances.

Dated: January 11, 2012

Respectfully submitted,



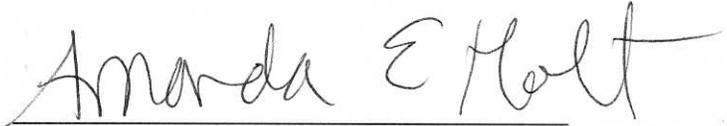
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James Yoest, Jeffrey Meyer, Christopher
H. Fromme, Timothy F. Burnett, Chris
Hertzog, Glenn Eckhart, and Mary
Frances Ballard.

VERIFICATION

The undersigned Petitioner hereby states that the factual averments set forth in the above Petition are true and correct to the best of the undersigned's knowledge, information and belief and are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

A handwritten signature in cursive script that reads "Amanda E. Holt". The signature is written in black ink and is positioned above a horizontal line.

Amanda E. Holt

Dated: January 11, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2012, I caused a true and correct copy of the foregoing Petition for Review and all supporting documents to be served pursuant to Pa. R.A.P. 1514(c) as follows:

Via United States Certified Mail and electronic mail to:

Hon. Joseph A. Del Sole (Ret.)

jdelsole@dscslaw.com

Charles E. O'Connor, Jr.

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David Newmann