

**[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 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,	No. 7 MM 2012
Appellants	Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011

v.

ARGUED: January 23, 2012

2011 LEGISLATIVE REAPPORTIONMENT COMMISSION,

Appellee

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,	No. 1 WM 2012
	Appeal from the Legislative Reapportionment Plan of the 2011 Legislative Reapportionment Commission, dated December 12, 2011

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 :	Appeal from the Legislative
BIELSKI, DAVID LALEIKE, E. BRIAN :	Reapportionment Plan of the 2011
ABBOTT, NATHANIEL SMITH, and W. :	Legislative Reapportionment
DONALD BRACELAND,	Commission, dated December 12, 2011
Appellants	
v.	ARGUED: January 23, 2012
2011 LEGISLATIVE REAPPORTIONMENT :	
COMMISSION,	
Appellee	
MAYOR LEO SCODA and COUNCIL :	No. 3 MM 2012
PERSON JENNIFER MAYO,	
Appellants	Appeal from the Legislative
v.	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. :	
MORSCHHECK, LAWRENCE J. CHRZAN, :	Appeal from the Legislative
JULIA SCHULTZ and SHIRLEY RESNICK,	Reapportionment Plan of the 2011
Appellants	Legislative Reapportionment
v.	Commission, dated December 12, 2011
2011 LEGISLATIVE REAPPORTIONMENT :	ARGUED: January 23, 2012
COMMISSION,	
Appellee	

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

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

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.