

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

Appellants : ARGUED: January 23, 2012

v. :

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 : Appeal from the Legislative  
M. WASHINGTON, SENATOR MICHAEL J. : Reapportionment Plan of the 2011  
STACK, SENATOR VINCENT J. HUGHES, : Legislative Reapportionment  
SENATOR ANTHONY H. WILLIAMS, : Commission, dated December 12, 2011  
SENATOR JUDITH L. SCHWANK, :

ARGUED: January 23, 2012

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. :

2011 LEGISLATIVE REAPPORTIONMENT :  
COMMISSION, :

Appellee :

MAYOR CAROLYN COMITTA; COUNCIL :  
PRESIDENT HOLLY BROWN; WILLIAM J. :  
SCOTT, JR.; HERBERT A. SCHWABE, II; :  
JANE HEALD CLOSE; FLOYD ROBERT :  
BIELSKI; DAVID LALEIKE; E. BRIAN :  
ABBOTT; NATHANIEL SMITH; and W. :  
DONALD BRACELAND, :

No. 2 MM 2012

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

Appellants :

ARGUED: January 23, 2012

v. :

2011 LEGISLATIVE REAPPORTIONMENT :  
COMMISSION, :

Appellee :

MAYOR LEO SCODA and COUNCIL :  
PERSON JENNIFER MAYO, :

No. 3 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 :

THOMAS SCHIFFER, ALISON BAUSMAN, :  
RACHEL J. AMDUR, JOAN TARKA, :  
LAWRENCE W. ABEL, MARGARET G. :  
MORSHECK, LAWRENCE J. CHRZAN, :  
JULIA SCHULTZ and SHIRLEY RESNICK, :

No. 4 MM 2012

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

Appellants :

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

2011 LEGISLATIVE REAPPORTIONMENT  
COMMISSION,

Appellee

DENNIS J. BAYLOR,

Appellant

v.

No. 9 MM 2012

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

2011 LEGISLATIVE REAPPORTIONMENT  
COMMISSION,

Appellee

ANDREW DOMINICK ALOSI,

Appellant

v.

ARGUED: January 23, 2012

No. 10 MM 2012

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

2011 LEGISLATIVE REAPPORTIONMENT  
COMMISSION,

Appellee

CARLOS A. ZAYAS,

Appellant

v.

SUBMITTED: January 23, 2012

No. 17 MM 2012

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

2011 LEGISLATIVE REAPPORTIONMENT  
COMMISSION,

Appellee

SUBMITTED: January 24, 2012

WILLIAM C. KORTZ, MICHELLE L. VEZZANI, :	No. 4 WM 2012
MICHAEL E. CHEREPKO, GREGORY :	
ERSENKO, JOYCE POPOVICH, JOHN :	
BEVEC, LISA BASHIOUM, and RICHARD :	Appeal from the Legislative
CHRISTOPHER,	Reapportionment Plan of the 2011
	Legislative Reapportionment
Appellants	Commission, dated December 12, 2011
	:
	:
v.	:
	:
	:
2011 LEGISLATIVE REAPPORTIONMENT :	
COMMISSION,	
	:
	:
Appellee	:

**DISSENTING OPINION**

**MADAME JUSTICE ORIE MELVIN**

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

The Majority Opinion expeditiously provides significant breadth in scope and history of legislative redistricting, but I remain convinced that the Final Plan should be affirmed. The complaints of the various appellants notwithstanding, it is clear that there is no perfect plan. The Majority “recalibrates” the interplay of the constitutional requirements found in Section 16 of the Pennsylvania Constitution. In so doing, it invalidates the 2011 Final Plan, which was carefully constructed by the Legislative Reapportionment Commission (LRC) in accordance with our prior pronouncements concerning redistricting in the Commonwealth. In light of the significant public interest and exigencies of the electoral process, I believe that the Majority’s disposition is both unprecedented and unnecessary. Accordingly, I must dissent.

While our reapportionment precedent is limited, it unequivocally demonstrates that our overarching concern in redistricting matters is substantial equality of population. See

Specter v. Levin, 293 A.2d 15, 19 (Pa. 1972) (“Section 16’s desire for districts that are ‘compact’ must also yield, if need be, ‘to the overriding objective . . . (of) substantial equality of population.” (quoting Reynolds v. Sims, 377 U.S. 533, 579 (1964)); In re Reapportionment Plan for the Pa. General Assembly (In re 1981 Reapportionment), 442 A.2d 661, 665 (Pa. 1981) (articulating same principle); In re 1991 Pa. Legislative Reapportionment Comm’n, 609 A.2d 132, 138 (Pa. 1992) (same); Albert v. 2001 Legislative Reapportionment Comm’n, 790 A.2d 989, 993-94 (Pa. 2002) (same). Indeed, the Majority recognizes this to be true. See Majority Opinion, slip op. at 77 (“[T]his Court’s prior decisions emphasized equality of population as **the primary directive** in the redistricting efforts of the LRC.” (emphasis added)).<sup>1</sup> This acknowledgement, irrespective of any qualifying language, highlights the fallacy that the current plan is contrary to law. In view of this Court’s precedent, I find that the LRC acted in good faith in adopting the 2011 Final Plan. Consistent with our prior pronouncements, the LRC promulgated a plan that ultimately achieved substantial equality of population while balancing the other mandates in Section 16.

As justification for the conclusion that the 2011 Final Plan is unconstitutional, the Majority cites an alleged excessive number of subdivision splits, admonishing that prior plans cannot serve as a benchmark for scrutinizing subsequent plans. Despite this contention, we have undertaken a comparative approach in the recent past. Specifically, in Albert we compared the 2001 Final Plan with those previously approved

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<sup>1</sup> While the Majority opines that our previous emphasis on population equality derived from federal law, see Majority Opinion, slip op. at 84 (“Rather than deriving from our Constitution itself, the primacy of population equality in redistricting, which is clearly established in our decisional law, derives from federal decisional law . . .”), our case law states otherwise. See In re 1981 Reapportionment, 442 A.2d at 665 (“In Specter, this Court also made clear that, as a matter of **both** federal and state law, equality of population must be the controlling consideration in the apportionment of legislative seats.” (emphasis added)).

by this Court. Finding that the number of subdivision splits was similar, we determined the 2001 Plan withstood constitutional scrutiny. Albert, 790 A.2d at 998 (“[The Commission] claims that . . . no political subdivision was divided in forming a district unless absolutely necessary. Upon comparison of the instant Final Plan with those previously approved by this Court, we agree.”); id. at 999 n.12.<sup>2</sup> The Majority has not convinced me that the LRC’s use of the same exercise herein produced a constitutionally deficient plan.

I find it unnecessary to criticize the timeliness of the LRC’s actions, see Majority Opinion, slip op. at 14-17, and I disagree that it unnecessarily delayed this Court’s disposition. The LRC’s actions comported to the time frame set forth in Article 2, Section 17(c) of our Constitution, and both the LRC and this Court have proceeded with due diligence in this matter.

The LRC faithfully applied our existing precedent in preparing the 2011 Final Plan. By failing to uphold the LRC’s reliance on our prior decisions, the Majority interjects uncertainty into future redistricting cases. See Majority Opinion, slip op. at 78-79. Moreover, by declaring that the 2001 Plan remains in effect, the Majority ensures that certain districts will be overrepresented while others will be underrepresented, as evidenced by population shifts from 2000 to 2010. Such a situation is untenable. Finally, it is a fiction for the Majority to represent that the initial opportunity to “go forward” is upon remand. Majority Opinion, slip op. at 8. Rather, in my view, it is a step back. The LRC produced a reasoned plan that comports both with our decisional law and our

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<sup>2</sup> In making this point, I do not advocate adopting a maximum or minimum variation or setting a ceiling on permissible subdivision splits. I simply wish to reiterate that prior plans are instructive when considering whether a current plan comports with constitutional requirements.

Constitution. I am amenable to guidelines but only if they are truly prospective, i.e., applicable to the next decennial redistricting.

Having reviewed the Final Plan as a whole, and in view of existing precedent, I conclude that it is constitutionally permissible. Therefore, I would approve the Final Plan, thus allowing it to have “the force of law.” Pa. Const. art. 2, § 17(e).