

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, JOAN JESSEN, :  
ELIZABETH ROGAN, JAMES HERTZLER, :  
GARY EICHELBERGER, BARBARA B. :  
CROSS, and MARY FRANCES BALLARD :  
: No.  
Petitioners, :  
: Misc. Docket \_\_\_\_\_  
v. :  
: :  
: :  
2011 LEGISLATIVE REAPPORTIONMENT :  
COMMISSION OF THE COMMONWEALTH :  
OF PENNSYLVANIA, :  
: :  
Respondent. :

**VERIFIED PETITION FOR REVIEW**

IN THE NATURE OF AN APPEAL FROM THE REVISED PLAN OF  
THE 2011 LEGISLATIVE REAPPORTIONMENT COMMISSION

Pursuant to Article II, Section 17(d) 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, Mary Frances Ballard, Joan Jessen, Elizabeth Rogan, James Hertzler, Gary  
Eichelberger, and Barbara B. Cross. (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 revised 2011 Legislative Reapportionment Plan adopted June 8, 2012 by the 2011 Legislative Reapportionment Commission of the Commonwealth of Pennsylvania (the “LRC”) on June 8, 2012 (the “Revised LRC Plan”), on remand from this Court.

This Court’s February 3 decision (“*Holt*”) determined that the LRC’s original reapportionment plan (the “Original LRC Plan”) was contrary to law because it violated the requirement of Article II, Section 16 of the Pennsylvania Constitution that a redistricting plan may not split political subdivisions “unless absolutely necessary.” *Holt* provided clear guidance as to the factors the LRC could permissibly consider in developing a revised plan on remand. The decision also afforded the LRC “greater flexibility” with respect to the equal population requirement, making it easier than ever before to achieve Section 16’s other requirements.

Yet the LRC has once again flouted the “multiple commands” of Section 16, and disregarded this Court’s mandate. Like the Original LRC Plan, the Revised LRC Plan creates hundreds of subdivision splits and fractures that are completely unnecessary to achieve any legitimate objective and ignores compactness and contiguity considerations mandated by the Constitution. In fact, the revised plan submitted by Petitioner Holt on remand (the “Revised Holt Plan”) demonstrates that the LRC could have readily created a redistricting plan that creates *half* as many subdivision splits while achieving better overall population equality and avoiding the numerous compactness and contiguity problems that the Revised LRC Plan would perpetuate for another ten years.

The LRC has had multiple opportunities to comply with its obligations under Article II, Sections 16 and 17 of the Pennsylvania Constitution. It has been presented with detailed reapportionment proposals, and clear guidance from this Court, that should have made it relatively easy to comply with those obligations. The LRC, however, has proved unable or unwilling to do so. The Revised LRC Plan must be declared contrary to law, and remanded with instructions to reapportion the Commonwealth in accordance with the Revised Holt Plan.

### **STATEMENT OF JURISDICTION**

1. This Court has exclusive appellate jurisdiction over this Petition pursuant to Article II, Section 17(d) 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 Revised LRC Plan. Under the Revised LRC Plan, Lehigh County, in which Ms. Holt resides, would be divided into seven House of Representative Districts in violation of Article II, Section 16 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 Revised LRC Plan. Under the Revised LRC Plan, the City of Philadelphia, in which Ms. Tomlin resides, would be divided into seven Senate Districts in violation of Article II, Section 16 of the Pennsylvania Constitution. Under the Revised LRC Plan, Philadelphia Ward 42, in which Ms. Tomlin resides, would be divided into three House of Representative Districts in violation of Article II, Section 16 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 Revised LRC Plan. Under the Revised LRC Plan, Ross Township, in which Mr. Nudi resides, would be divided into two House of Representative Districts in violation of Article II, Section 16 of the Pennsylvania Constitution. Under the Revised LRC Plan, Allegheny County, in which Mr. Nudi resides, would be divided into twenty-three House of Representative Districts in violation of Article II, Section 16 of the Pennsylvania Constitution.

5. Petitioner Diane Edbril 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 Revised LRC Plan. Under the Revised LRC Plan, Radnor Township, in which Ms. Edbril resides, would be divided into two House of Representative Districts and Delaware County into four Senate Districts and eleven House Districts in violation of Article II, Section 16 of the Pennsylvania Constitution.

6. Petitioner Dariel I. Jamieson resides at 200 Lafayette Lane, Chesterbrook 19087, Chester County, Pennsylvania. Ms. Jamieson is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Revised LRC Plan. Under the Revised LRC Plan, Chester County, in which Ms. Jamieson resides, would be divided into four Senate Districts and nine House Districts in violation of Article II, Section 16 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 Revised LRC Plan. Under the Revised LRC Plan, Delaware County, in which Ms. Lavin resides, would be divided into four Senate Districts and eleven House Districts in violation of Article II, Section 16 of the Pennsylvania Constitution.

8. Petitioner James G. 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 Revised LRC Plan. Under the Revised LRC Plan, Ross Township, in which Mr. Yoest resides, would be divided into two House of Representative Districts in violation of Article II, Section 16 of the Pennsylvania Constitution. Under the Revised LRC Plan, Allegheny County, in which Mr. Yoest resides, would be divided into twenty-three House of Representative Districts in violation of Article II, Section 16 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 Revised LRC Plan. Under the Revised LRC Plan, Ross Township, in which Mr. Meyer resides, would be divided into two House of Representative Districts in violation of Article II, Section 16 of the Pennsylvania Constitution. Under the Revised LRC Plan, Allegheny County, in which Mr. Meyer resides, would be divided into twenty-three House of Representative Districts in violation of Article II, Section 16 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 Revised LRC Plan. Under the Revised LRC Plan, Ross Township, in which Mr. Fromme resides, would be divided into two House of Representative Districts in violation of Article II, Section 16 of the Pennsylvania Constitution. Under the Revised LRC Plan, Allegheny County, in which Mr. Fromme resides, would be divided into twenty-three House of Representative Districts in violation of Article II, Section 16 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 Revised LRC Plan. Under the Revised LRC Plan, Ross Township, in which Mr. Burnett resides, would be divided into two House of Representative Districts in violation of Article II, Section 16 of the Pennsylvania Constitution. Under the Revised LRC Plan, Allegheny County, in which Mr. Burnett resides, would be divided into twenty-three House of Representative Districts in violation of Article II, Section 16 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 Revised LRC Plan. Under the Revised LRC Plan, Lehigh County would be divided into seven House Districts in violation of Article II, Section 16 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 Revised LRC Plan. Under the Final Plan, Salisbury Township, in which Mr. Eckhart resides, would be divided into three House of Representatives Districts in violation of Article II, Section 16 of the Pennsylvania Constitution. Under the Final Plan, Lehigh County, in which Mr. Eckhart resides, would be divided into seven House of Representatives Districts in violation of Article II, Section 16 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 and eleven House Districts in violation of Article II, Section 16 of the Pennsylvania Constitution.

15. Petitioner Joan Jessen resides at 159 Canterbury Lane, McMurray 15317, Washington County, Pennsylvania. Ms. Jessen is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Washington

County, in which Ms. Jessen resides, would be divided into two Senate Districts and Seven House Districts in violation of Article II, Section 16 of the Pennsylvania Constitution.

16. Petitioner and Lower Merion Township Commissioner Elizabeth Rogan resides at 411 Holly Lane, Wynnewood 19096, Montgomery County, Pennsylvania. Ms. Rogan is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Montgomery County, in which Ms. Rogan resides, would be divided into six Senate Districts and 18 House Districts in violations of Article II, Section 16 of the Pennsylvania Constitution. Lower Merion Township, in which Ms. Rogan resides, would be divided into four House Districts in violation of Article II, Section 16 of the Pennsylvania Constitution.

17. Petitioner and County Commissioner James Hertzler resides at 920 South Humer Street, Enola 17025, Cumberland County, Pennsylvania. Mr. Hertzler is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Cumberland County, in which Mr. Hertzler resides, would be divided into three Senate Districts in violation of Article II, Section 16 of the Pennsylvania Constitution.

18. Petitioner and County Commissioner Gary Eichelberger resides at 606 South Arch Street, Mechanicsburg 17055, Cumberland County, Pennsylvania. Mr. Eichelberger is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Cumberland County, in which Mr. Eichelberger



resides, would be divided into three Senate Districts in violation of Article II, Section 16 of the Pennsylvania Constitution.

19. Petitioner and County Commissioner Barbara B. Cross resides at 180 Springview Road, Carlisle 17015, Cumberland County, Pennsylvania. Ms. Cross is a registered voter of the Commonwealth of Pennsylvania and is aggrieved by the Final Plan. Under the Final Plan, Cumberland County, in which Ms. Cross resides, would be divided into three Senate Districts in violation of Article II, Section 16 of the Pennsylvania Constitution.

20. 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*, 790 A.2d 989, 995 (Pa. 2002).

### **RESPONDENT**

21. Respondent, the 2011 Legislative Reapportionment Commission of the Commonwealth of Pennsylvania (the "Commission"), was established pursuant to Article II, Sections 17(a) and (b) 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**

22. Article II, Section 16 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**

23. Petitioners seek review of the Revised LRC Plan, adopted on June 8, 2012. True and correct copies of the Revised LRC Plan for the Pennsylvania Senate and House of Representatives are attached as Exhibits A and B, respectively.

24. Pursuant to Article II, Section 17(d) of the Pennsylvania Constitution, this Court must review the Revised LRC Plan to determine whether it is “contrary to law.”

## **PROCEDURAL BACKGROUND**

25. The LRC adopted a Preliminary Reapportionment Plan at an administrative meeting held on October 31, 2011 (the “Preliminary Plan”). Under Article II, Section 17(c) of 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.

26. 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 a final reapportionment plan (the “Original LRC Plan”).

27. On January 11, 2012, Petitioners filed a Petition for Review challenging the Original LRC Plan as “contrary to law” under the Pennsylvania Constitution. The Pennsylvania Supreme Court heard oral arguments for all petitions challenging the Original LRC Plan on January 23, 2012.

28. On January 25, 2012, the Pennsylvania Supreme Court remanded the Original LRC Plan to the LRC.

29. In *Holt v. 2011 Legislative Reapportionment Commission*, No. 77 MM 2012, \_\_A.2d \_\_ (Pa. Feb. 3, 2012), the Supreme Court held that “the [Original LRC] Plan violate[d] the constitutional command to respect the integrity of political subdivisions.” *Id.* at \*8. The Court further noted that “the [Holt] appellants have shown that the [Commission] could have easily achieved a *substantially* greater fidelity to all of the mandates in Article II, Section 16 – compactness, contiguity, and integrity of political subdivisions[.]” *Id.* (emphasis added).

30. The *Holt* decision ordered the Commission to fashion a revised Plan that comports with all constitutional requirements. *Id.* at \*85-86.

31. On remand, the Commission held public meetings on February 22, 2012 and April 12, 2012, to consider the adoption of a Preliminary Revised Legislative Reapportionment Plan. In the intervening period, the Commission postponed public meetings that were originally scheduled for February 28, 2012 and March 2, 2012.

32. On April 12, 2012, the same day as the second public meeting, the Commission adopted a Preliminary Revised Plan. In accordance with Article II, Section 17(c) of the Pennsylvania Constitution, Petitioner Holt and others timely filed exceptions to the Preliminary Revised Plan on or before May 14, 2012.

33. The Commission conducted public hearings to discuss the adoption of a Revised Final Plan at public hearings on May 2, 2012 and May 7, 2012. The Commission adopted the Revised LRC Plan at a public administrative meeting held on June 8, 2012. Pursuant to Article II, Section 17(d) the Pennsylvania Constitution, “any aggrieved person” may file an appeal directly to the Supreme Court on or before July 9, 2012 – 30 days from the filing of the Revised Plan.

#### **GENERAL STATEMENT OF OBJECTIONS TO THE DETERMINATION**

34. The Revised LRC Plan is contrary to law and must be rejected pursuant to Article II, Section 17(d) of the Pennsylvania Constitution, for the same reason that this Court rejected the Original LRC Plan: it violates Article II, Section 16. 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.

35. This Court’s decision in *Holt* provided the LRC with clear guidance on the factors that will be taken account in evaluating a reapportionment plan under Section 16. The decision also afforded the LRC additional flexibility regarding compliance with the

equal population requirement, making it easier than ever before to fulfill the other requirements of Section 16.

36. Unfortunately, however, the LRC on remand failed to comply with the Court's mandate. The Revised LRC Plan as a whole suffers from the same pervasive constitutional deficiencies as the Original LRC Plan. On a state-wide basis, the Revised LRC Plan creates *hundreds* of subdivision splits beyond those that are necessary to comply with the equal protection and other requirements of Section 16. Under *Holt*, these excess divisions are not "absolutely necessary." In fact, from a constitutional standpoint, they are completely *unnecessary*. The evidence before the LRC on remand shows that the LRC could have readily achieved the same level of population equality, compactness and contiguity while reducing the number of subdivision splits and fractures by more than 50 percent. The Revised Plan "thus violates the constitutional command to respect the integrity of political subdivisions." *Holt*, at \*8.

***Like the Original LRC Plan, the Revised Plan Creates Hundreds of Subdivision Splits and Fractures That Are Not "Absolutely Necessary"***

37. Under *Holt*, subdivision splits are not absolutely necessary if an alternative plan shows that "a redistricting map could readily be fashioned which maintained a roughly equivalent level of population deviation . . . as the [Revised] Plan, while employing *significantly fewer political subdivision splits* with respect to both Chambers of the General Assembly." *Holt*, Op. at 72 (italics added). The relevant consideration is the *difference* between the number of splits under the Revised LRC Plan and readily

achievable alternative plans. *Holt* “does not purport to convey in absolute terms what is an acceptable number of political subdivision splits.” *Id.* at 73 n.33.

38. On remand, following issuance of the Preliminary Revised Plan, Petitioner Holt submitted revised redistricting plans designed exclusively to satisfy the objectives of Section 16 and federal law, 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. Petitioner Holt submitted a total of three (3) such alternative revised plans for the Senate and the House, providing multiple examples of how the LRC could achieve the same dramatic reduction in subdivision splits and fractures while also satisfying its other Constitutional duties. For ease of reference, Petitioners have selected one of the three revised alternative plans (the “Revised Holt Plan”) for final comparison with the Revised LRC Plan. True and correct copies of the Revised Holt Plan is attached hereto as Exhibit C.

39. Petitioner Holt created the Revised Holt Plan in essentially the same manner that she created the Holt Plan addressed in the Court’s prior decision, except that the Revised Holt Plan, like the Revised LRC Plan, allows for a greater range of deviation from the ideal population of each House and Senate District, as contemplated by this Court’s opinion in *Holt*. The Revised LRC Plan has a maximum deviation from ideal population of 7.957 percent for Senate Districts and 7.872 percent for House Districts. The corresponding percentages for the Revised Holt Plan are similar, but lower: 7.866 percent for Senate Districts and 7.751 percent for House Districts.

40. Under the Revised Holt Plan, like the Original Holt Plan, all subdivisions within the foregoing deviation from strict voting equality were kept intact unless unavoidable, and 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. Certain adjustments were then made 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.

41. Petitioner Holt’s analysis once again demonstrated that, as stated in *Holt*, “a redistricting map could readily be fashioned which maintained a roughly equivalent level of population deviation . . . as the [Revised LRC] Plan, while employing *significantly fewer political subdivision splits* with respect to both Chambers of the General Assembly.” *Holt*, Op. at 72 (italics added). Specifically, the Revised Holt Plan used 202 *fewer splits* in the House, and 37 *fewer splits* in the Senate, than the Revised LRC Plan. That translated into an even greater differential in the number of fractures — *i.e.*, the fragments of subdivisions remaining after a split. The Revised Holt Plan creates 339 *fewer fractures* in House Districts and 58 *fewer fractures* in Senate Districts – a total of 397 fewer fractures overall – than the Revised LRC Plan. As a result, under the Revised Holt Plan, 137 political subdivisions (counties, municipalities, ward) that are split under the LRC’s Revised Plan for the House Districts, are not split at all, and 21 political subdivisions in the Senate Districts, for a total of 158 political subdivisions that remain intact under the Revised Holt Plan and are not intact under the Revised LRC Plan.

42. The following table highlights the key differences between the Revised LRC Plan and the Revised Holt Plan with respect to the number of subdivisions split and the number of subdivision fractures:

<b>HOUSE</b>	<b><u>Revised LRC Plan</u></b>	<b><u>Revised Holt Plan</u></b>	<b><u>Avoidable Excess</u></b>	<b><u>Reduction Possible</u></b>
Total Split Subdivisions	223	86	137	61%
Total Subdivision Fractures	683	344	339	50%
Total Splits in House	460	258	202	44%
<b>SENATE</b>	<b><u>Revised LRC Plan</u></b>	<b><u>Revised Holt Plan</u></b>	<b><u>Avoidable Excess</u></b>	<b><u>Reduction Possible</u></b>
Total Split Subdivisions	38	17	21	55%
Total Subdivision Fractures	110	52	58	53%
Total Splits in Senate	72	35	37	51%

43. The above data demonstrates that the Revised LRC Plan, as a whole, requires hundreds more split subdivisions and subdivision fractures on a state-wide basis than are “absolutely necessary.” As the “Reduction Possible” column shows, the LRC could easily reduce the number of splits and fractures by percentages by about 50%. Put differently, the LRC has created twice as many splits and fractures as are necessary.

44. While the statewide impact is the guiding consideration, the many individual examples of unnecessary subdivision splits in the Revised LRC Plan confirm that the LRC failed to follow the clear dictates of Section 16 and this Court’s decision in *Holt*.

45. Like the Original LRC Plan, the Revised LRC Plan for the House created *multiple* fractures of 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 *three* 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 *three*.

c. The Final Plan split Philadelphia Ward 48 into *three* House Districts even though it is only 33.14% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *three*.

d. The Final Plan split Philadelphia Ward 54 into *three* 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 *three*.

e. The Final Plan split Ridley Township Ward 1 (in Delaware County) into *three* House Districts even though it is only 4.05% of an ideal House 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 Upper Dublin (in Montgomery County) into *three* House Districts even though it is only 40.86% 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 Ross Township (in Allegheny County) into *two* House Districts even though it is only 49.71% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *two*.

i. The Final Plan split Lancaster Township (in Lancaster County) into *four* House Districts even though it is only 25.81% of an ideal House district population. There are no equal population, VRA or other requirements that justified even a single split, much less *four*.

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*.

46. The Revised LRC Plan takes a similar approach in the Senate, routinely creating multiple fractures of subdivisions that should not be split at all. Among *many* other examples:

k. The Final Plan split Philadelphia Ward 12 into *two* Senate Districts even though it is only 8.65% of an ideal Senate district population. There are no equal population, VRA or other requirements that justified even a single split, much less *two*.

l. The Final Plan split Philadelphia Ward 21 into *two* 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 *two*.

m. The Final Plan split Huntingdon into *two* Senate Districts even though it is only 18.07% of an ideal Senate district population. There are no equal population, VRA or other requirements that justified this split.

n. The Final Plan split Warren County into *two* Senate Districts even though it is only 16.46% of an ideal Senate district population. There are no equal population, VRA or other requirements that justified even a single split, much less *two*.

o. 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*.

p. The Final Plan split Washington County into *two* 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 *two*.

q. The Final Plan split Cumberland County into *three* Senate Districts even though it is only 92.66% of an ideal Senate district population. There are no equal population, VRA or other requirements that justify even two splits, much less *three*.

***The Commission's Plan Cannot Be Justified Under Any Constitutionally Permissible Criteria***

47. *Holt* requires a “balancing” of “the multiple commands in Article II, Section 16, which embrace contiguity, compactness, and the integrity of political subdivisions, no less than the command to create legislative districts as nearly equal in population as ‘practicable.’” *Holt* at 84. “Equality of population remains the overriding objective,” *id.*, but *Holt* expressly afforded the Commission “greater flexibility” on remand to “allow more breathing space for concerns of contiguity, compactness, and the integrity of political subdivisions to be respected.” *Id.* at \*81, 85.

48. Yet, despite this “greater flexibility,” the Revised LRC Plan creates hundreds of unnecessary splits and fractures created by the Final Plan that cannot be explained by any constitutionally valid objective under Section 16, nor by any other legitimate objective.

49. As discussed above, population equality does not justify any of the splits or fractures under the Revised LRC Plan because the Revised Holt Plan achieves a *lower* maximum deviation from the ideal Senate and House District population than the Revised LRC Plan. In fact, even the *Original* Holt Plan – which had about half the maximum population deviation of the Revised LRC Plan – achieved significantly fewer splits and subdivision fractures than the Revised LRC Plan.

*The LRC's Excessive Divisions Cannot be Justified on Compactness Grounds*

50. The record on remand shows that the excessive divisions under the Revised LRC Plan were not used to create more compact districts. On the contrary, the LRC on remand failed to take readily achievable steps to heed the concerns expressed in *Holt* regarding the failure of the Original LRC Plan to satisfy the Constitution's compactness requirement. *Holt* at 79.

51. *Holt* identified three Senate Districts — 3, 35 and 15 — that on their face had obvious compactness problems. *Id.* Those problems were needlessly perpetuated in the Revised LRC Plan. Indeed, a well-established standard for measuring compactness shows that far more voting districts than necessary have compactness problems at least as great as those of Senate Districts 3, 35 and 15.

52. Compactness “can be measured quantitatively in terms of dispersion, perimeter, and population ratios.” *Vieth v. Jubelirer* 541 U.S. 267, 349 & n.3 (2004) (Souter, J., dissenting) (citing Polsby & Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 YALE L. & POL'Y REV. 301, 339–351 (1991); Schwartzberg, *Reapportionment, Gerrymanders, and the Notion of “Compactness,”* 50 MINN. L. REV. 443 (1966) (other citations omitted)).

53. The “Polsby & Popper” method referenced by Justice Souter in *Vieth* “is a perimeter measure that considers how efficiently the area of a district is encompassed by its perimeter and boundary.” *Committee for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 835 F. Supp. 2d 563, 570 (N.D. Ill. 2011). It essentially compares the shape of a given district to the smoothness of a circle by “comput[ing] a ratio based on the area of

the district compared to a circle that equals the length of the perimeter of the district.” *Wilkins v. West*, 571 S.E.2d 100, 109 n.6 (Va. 2002). The objective formula used to compute this ratio<sup>1</sup> yields a score between 0 and 1.0, with 0 being the least compact possible district and 1.0 being the most compact district possible. A perfect circle yields a “perfect” score of 1.0 under this formula, which is designed to measure “smoothness,” taking away points for any irregular boundaries in a boundary line. . . districts with appendages or indentations will always score worse than those without.” Polsby & Popper, 9 YALE L. & POL’Y REV. at 349-50 & n.207.

54. Applying the objective Polsby & Popper compactness formula to the districts proposed in the Revised LRC Plan, it fails to achieve minimal compactness and deviates significantly from the scores achieved under both the Revised Holt Plan and the Amended Section 16 plan, which was presented to the Court previously.

55. A full list of Polsby & Popper compactness scores for the Senate and House districts created under (a) the Revised Preliminary Plan, (b) the Original Holt Plan, and (c) the Original LRC Plan is available at <http://www.azavea.com/blogs/atlas/2012/04/theyre-at-it-again-preliminary-pennsylvania-legislative-redistricting-maps/> (last visited July 6, 2012). A printed chart providing the same scores is attached hereto as Exhibit E.<sup>2</sup> An updated chart providing the Polsby & Popper scores for districts under the Revised LRC Plan and Revised Holt Plan is attached

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<sup>1</sup> The specific formula is as follows: “(4 times pi, multiplied by the district’s area) divided by (the square of the length of the district’s perimeter.)” Polsby & Popper, 9 YALE L. & POL’Y REV. at n.204. This is the “[m]ost common method of measuring compactness.” AZAVEA, *Compactness Metrics* (Nov. 11, 2011), available at [http://www.fairshapepa.org/wp-content/uploads/2011/11/Compactness-Metrics\\_2011\\_11\\_11-4.docx](http://www.fairshapepa.org/wp-content/uploads/2011/11/Compactness-Metrics_2011_11_11-4.docx) (last visited July 9, 2012).

<sup>2</sup> The record contains multiple instances during the hearings below where the LRC was referred to this analysis, and there was virtually no change between the aggregate average compactness scores for the Revised Preliminary Plan and the final Revised LRC Plan.

hereto as Exhibit F. The Revised Holt Plan achieved a greater degree of compactness in 40 out of 50 Senate Districts and 161 out of 203 House Districts.

56. The overall average Polsby & Popper score for the Revised LRC Plan, as compared to the Revised Holt Plan and the Original LRC Plan are as follows:

Average Polsby & Popper Scorefor:	Rev. Holt Plan	Rev. LRC Plan	Holt 2011	Orig. LRC Plan
Senate	.351	.275	.345	.250
House	.372	.277	.368	.261

57. During the proceedings on remand, LRC was repeatedly alerted to the compactness problems its proposed plan created, as measured using Polsby & Popper compactness scores.

58. The Polsby & Popper compactness scores for Senate Districts 3, 15 and 35 under the Original LRC Plan demonstrate that this Court’s compactness concerns in *Holt* were well justified:

	SD 3	SD 15	SD 35
Original Polsby & Popper Score:	.083	.176	.099

59. In Philadelphia, Senate District 3 remains among the low-scoring Senate Districts and continues to have a particularly odd shape under the Revised LRC Plan. The northern portion of the county continues to be sliced between three districts – 3, 4, and 7. Senate Districts 2, 3, and 7 all score low and have rather odd shapes.

60. Other Senate Districts with particularly odd shapes in the Revised LRC Plan include 18, 19, 20, 30, and 48, each of which also scores low on the Polsby &

Popper scale. Of the other Senate Districts raising specific concerns for the Court in *Holt*, Senate Districts 15 and 35 have been made more “compact” in the Revised LRC Plan, but their neighboring districts – namely Senate Districts 48 and 30 – are now less compact.

61. Given the Court’s view that a district with a Polsby & Popper score of 0.176 (SD 15) had “obvious ‘compactness’ issues,” the relatively high number of districts continuing to score 0.176 or less on the Polsby & Popper scale provides a strong indication that the Revised LRC Plan lacks compactness. 22% of Senate Districts and 18% of House Districts under the Revised LRC Plan fail to achieve a Polsby & Popper score higher than 0.176. Thus, approximately one-fifth of the LRC’s proposed districts remain within the questionable compactness range.

62. By comparison, none of the Senate Districts and only 4% of the House Districts under the Revised Holt Plan has a Polsby & Popper score of 0.176 or less. Further, while 68% of the Senate Districts under the Revised Holt Plan would achieve a Polsby & Popper score of at least 0.3, only 34% of the LRC Senate Districts receive a similar score. The following chart demonstrates the greater degree of compactness achievable for Senate Districts under the Revised Holt Plan.

Senate District Polsby-Popper Score of:	Rev. Holt	Rev. LRC
.176 or less	0%	22%
.177 to .199	4%	6%
.200 to .299	28%	38%
.300 to .399	40%	18%
.400 or higher	28%	16%



63. With respect to the House, only 38% of the LRC’s House Districts scored at least 0.3 on the Polsby & Popper scale, while only 688% of the House Districts under the Revised Holt Plan received a higher score. The following chart demonstrates the greater degree of compactness achievable for House Districts under the Revised Holt Plan.

Senate District Polsby & Popper Score of:	Rev. Holt	Rev. Final
.176 or less	4%	18%
.177 to .199	4%	8%
.200 to .299	24%	36%
.300 to .399	29%	23%
.400 or higher	39%	15%

64. Of the low-scoring House Districts, those with a particularly odd shape under the Revised LRC Plan include 10, 14, 17, 35, 38, 54, 77, 82, 134, 172, 173, 177, 179, 191, and 197. Allegheny County in particular saw decreases in compactness for HD 35 and HD 38, each of which already had low scores under the Original LRC Plan, while continuing to maintain their odd shape. In addition, the compactness for HD 96 and HD 189 could be doubled without harming the overall compactness of neighboring districts.

65. The foregoing Polsby & Popper data offers further objective evidence that the excessive divisions were not used to create a significantly greater degree of compactness in districts.

***The Excessive Splits under the Revised LRC Plan Cannot be Justified on Contiguity Grounds***

66. The LRC’s excessive splits and compactness problems also resulted in obvious contiguity problems.

67. Article II, Section 16 of the Pennsylvania Constitution provides that that legislative districts should be “composed of ... contiguous territory.” It makes no mention or distinction between populated and unpopulated territory. All territories must be kept contiguous with the rest of their district.

68. In *Specter*, the Court expressed it this way:

A contiguous district has been defined as one in which a person can go from any point within the district to any other point [within the district] without leaving the district," or one in which "no part of the district is wholly physically separate from any other part."<sup>3</sup>

69. Under the Revised LRC Plan, 8 House Districts, which include 12 pieces of territory/land, are not contiguous with their assigned House District. They are:

- a. HD 010 Taylor Twp., Lawrence Census block 4120, 2013, 2015, 2016
- b. HD 037 Mount Joy Twp., Lancaster District Cloverleaf Census block 3004, 3006 of Block Group 3 Census Tract 107.2
- c. HD 043 East Lampeter Twp., Lancaster Census block 1021
- d. HD 043 Lancaster Twp. District 8, Lancaster Census block 3017, 2037
- e. HD 097 Manheim Twp. District 17, Lancaster Census block 2006, 2003, 2002, 2001, 2000
- f. HD 124<sup>4</sup> West Brunswick Twp., Schuylkill Census block 3131

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<sup>3</sup> *Com. ex rel. Specter v. Levin*, 293 A.2d 15, 23 (Pa. 1972) (internal quotations and citation omitted).

<sup>4</sup> The claim against this district was made the appellant at 230 MM 2001. The record states: “He further asserts that the 124th and 125th House districts violate the requirement that districts be compact and contiguous because a two-mile portion of uninhabited game land divides them.” *Albert v. 2011 Leg. Reapportionment Comm’n*, 790 A.2d 989, 997 (Pa. 2002). In the Court’s general

g. HD 128 Cumru Twp., Berks Census block 1000, 1001, 1003, 1004, 1005, 1006, 1139, 1018

h. HD 156 Birmingham Twp Chester County Census block 1044, 1045

70. At least 10 of these pieces of land were not contiguous in the 2011 Original LRC Plan and remain so in the 2012 Revised Final Plan. Additionally, these pieces are each habitable.

a. HD 10, 37, and 43 (Lancaster Twp. Portion) all have population living in the non-contiguous part of the district (25, 20, and 21 respectively).

b. HD 43 (East Lampeter Portion), 97, 128, 156 all have buildings located on the non-contiguous part of the district. Buildings would suggest that the land, while not inhabited now, is not uninhabitable. It is equally possible that these portions of land might become inhabited in the next 10 years.

71. In addition, the LRC needlessly severed 641 persons from the rest of their township when they divided Manheim Township District 7 in the name of contiguous requirements. The issues of contiguity in this instance might be easily addressed without harming any voting precinct.

72. The LRC also needlessly severed 196 persons from the rest of their township when they divided Springfield Township Ward 3 Division 2 in the name of contiguous requirements. The issues of contiguity in this instance might be easily addressed without harming any voting precinct.

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conclusion to the many claims it said the Final Plan was contiguous when compared with prior plans. But that LRC apparently claimed their districts were contiguous, whereas this LRC has not disputed our claim on non-contiguous districts.

***VRA Concerns Do Not Justify the Excess Splits under the Revised LRC Plan***

73. Compliance with the Voting Rights Act also does not justify any of the excessive splits and fractures under the Revised LRC Plan.

74. In the Senate, two formerly minority-majority districts now fall just below the standard set in *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009), of 50% + 1 of the over 18 population. It is only at 49.6% in Senate District 4 and 49.9% in Senate District 7. This is even after the LRC was presented with evidence showing three ways to draw boundaries in Philadelphia that divided no wards and kept all four previously minority-majority Senate Districts above this VRA standard.

75. In the House, only 15 districts meeting the minority-majority standard were created by the LRC even though Holt offered as many as four additional districts meeting this standard while avoiding a significant number of divisions. For instance, under all three proposals, Pittsburgh was not denied both of its minority-majority districts. Philadelphia only contains 12 when as many as 15 were possible while simultaneously reducing the number of split wards from 36 to only 14.

***The Court Should Remand with Directions to Reapportion the Commonwealth in Accordance with the Revised Holt Plan***

76. 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.

77. The LRC has had two opportunities to adopt a plan that complies with the requirements of the Constitution and has now twice failed to do so. When confronted with such failure on the part of the legislative branch to adopt a constitutionally valid apportionment after remand of a prior invalid plan, this Court is left with the “task of fashioning such affirmative relief as would be necessary to ensure a constitutionally valid legislative apportionment. . . .” *Butcher v. Bloom*, 216 A.2d 457, 459 (Pa. 1966).

78. In order to ensure that the LRC will adopt a plan that complies with the mandates of the Constitution in this case, Petitioners respectfully request that the LRC be instructed on further remand to adopt the Revised Holt Plan or any alternative plan that contains no more splits or fractures of political subdivisions than the number of splits and fractures made under the Revised Holt Plan.<sup>5</sup>

### **RELIEF SOUGHT**

WHEREFORE, petitioner prays the Court:

- a) Determine that the Revised LRC Plan is contrary to law under Article II, Section 17(d) of the Pennsylvania Constitution;
- b) Remand the Revised Final Plan to the LRC and direct the LRC, pursuant to Article II, Section 17(d) of the Pennsylvania Constitution, to reapportion the Commonwealth with specific instructions to adopt the Revised Holt Plan or an alternative plan that contains no more splits and fractures than the number of splits and fractures made in the Revised Holt Plan; and

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<sup>5</sup> As noted, Petitioner Holt submitted three alternative plans to the LRC, each of which would have been constitutionally compliant if adopted, thus demonstrating that the LRC has multiple options for drawing the specific district lines while still reducing the number of splits and fractures to a mandatory minimum to ensure compliance with the Constitution.

c) Grant such further relief as may be just under the circumstances.

Dated: January 11, 2012

Respectfully submitted,



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James Hertzler, Gary Eichelberger and  
Barbara B. Cross.

VERIFICATION

The undersigned Petitioner hereby states that she is authorized to make this verification on behalf of Petitioners Elaine Tomlin, Louis Nudi, Diane Edbril, Dariel I. Jamieson, Lora Lavin, James Yoest, Jeffrey Meyer, Glenn Eckhart, Christopher H. Fromme, Timothy F. Burnett, Chris Hertzog, Glen Eckhart, Mary Frances Ballard, Joan Jessen, Elizabeth Rogan, James Hertzler, Gary Eichelberger and Barbara B. Cross and 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.

  
Amanda E. Holt

Dated: July 9, 2012

## CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of July, 2012, I caused a true and correct copy of the foregoing Verified 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.)  
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*Via United States Certified Mail to:*

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David Newmann