

## Using an Old Legislative Districting Plan

*Smith v. Aichele* (2:12-cv-488), *Garcia v. 2011 Legislative Reapportionment Commission* (2:12-cv-556), and *Pileggi v. Aichele* (2:12-cv-588)  
(R. Barclay Surrick, E.D. Pa.)

On Friday, February 3, 2012, the Republican majority leaders of both houses of Pennsylvania's legislature and another voter filed a federal complaint seeking to enjoin Pennsylvania's secretary of the commonwealth from using in April 24 primary elections legislative district lines based on the 2000 census because litigation had successfully blocked a districting plan based on the 2010 census.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order, a preliminary injunction, a permanent injunction, and a three-judge court to hear their apportionment challenge.<sup>2</sup>

The court assigned the case to Judge R. Barclay Surrick, who issued an order on the day the case was filed for hearing on the following Monday.<sup>3</sup> On the day of the hearing, Democratic leaders moved to intervene in opposition to the plaintiffs.<sup>4</sup> Without ruling on the intervention motion, Judge Surrick permitted the Democratic leaders to participate in the Monday hearing, over the plaintiffs' objection.<sup>5</sup>

Pennsylvania's supreme court had determined on January 25 that a district plan based on the 2010 census was unconstitutional, and the court issued its opinion supporting its order on February 3.<sup>6</sup> On January 30, the speaker of Pennsylvania's house of representatives filed a federal suit to block use of district lines based on the 2000 census.<sup>7</sup> On February 2, the speaker filed a motion to convene a three-judge court.<sup>8</sup> Three voters filed a federal complaint against the secretary and the 2011 Legislative Reapportionment Commission to block use of 2000-census lines.<sup>9</sup> On February 6, the voters

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1. Complaint, *Pileggi v. Aichele*, No. 2:12-cv-588 (E.D. Pa. Feb. 3, 2012), D.E. 1; *Pileggi v. Aichele*, 843 F. Supp. 2d 584, 587–89 (E.D. Pa. 2012).

2. Motion, *Pileggi*, No. 2:12-cv-588 (E.D. Pa. Feb. 3, 2012), D.E. 2; *Pileggi*, 843 F. Supp. 2d at 585.

3. Order, *Pileggi*, No. 2:12-cv-588 (E.D. Pa. Feb. 3, 2012), D.E. 10.

4. Intervention Motion, *id.* (Feb. 6, 2012), D.E. 11; *Pileggi*, 843 F. Supp. 2d at 591.

5. Transcript at 10–11, *Garcia v. 2011 Legislative Reapportionment Comm'n*, No. 2:12-cv-556 (E.D. Pa. Feb. 6, 2012, filed May 7, 2012), D.E. 17.

6. *Holt v. 2011 Legislative Reapportionment Comm'n*, 38 A.3d 711 (2012); *Pileggi*, 843 F. Supp. 2d at 588, 591.

7. Complaint, *Smith v. Aichele*, No. 2:12-cv-488 (E.D. Pa. Jan. 30, 2012), D.E. 1; *Pileggi*, 843 F. Supp. 2d at 589.

8. Motion, *Smith*, No. 2:12-cv-488 (E.D. Pa. Feb. 3, 2012), D.E. 6; *Pileggi*, 843 F. Supp. 2d at 589.

9. Complaint, *Garcia*, No. 2:12-cv-556 (E.D. Pa. Feb. 2, 2012), D.E. 1; *Pileggi*, 843 F. Supp. 2d at 589.

moved for a temporary restraining order and a three-judge panel.<sup>10</sup> Judge Surrick heard from all parties in all three actions at the February 6 hearing.<sup>11</sup>

On February 8, Judge Surrick denied all requests to delay the primaries.<sup>12</sup> He determined that the public's interest in an orderly election process and the voters' interest in full participation in the presidential nomination process outweighed the injunctive relief requested.<sup>13</sup> Because the relief requested was unreasonable, the plaintiffs were not entitled to a three-judge court.<sup>14</sup>

On April 8, 2013, Judge Surrick ruled for the defendants in the voters' action, concluding that "Pennsylvania has a reasonably conceived plan for periodic reapportionment."<sup>15</sup> In a March 17, 2014, unpublished opinion, the court of appeals affirmed Judge Surrick's decision.<sup>16</sup> Because the appellants "are residents of even-numbered districts and were not eligible to vote in the 2012 election," the court found that the "appellants lack standing to pursue a claim of vote dilution with respect to the 2012 senatorial election."<sup>17</sup>

On May 8, 2013, Pennsylvania's supreme court approved a plan filed on April 12, 2012.<sup>18</sup>

The other actions were voluntarily dismissed in March<sup>19</sup> and May<sup>20</sup> of 2012.

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10. Motion, *Garcia*, No. 2:12-cv-556 (E.D. Pa. Feb. 6, 2012), D.E. 2; *Pileggi*, 843 F. Supp. 2d at 589.

11. Transcript, *supra* note 5, at 4.

12. *Pileggi*, 843 F. Supp. 2d at 585, 598; Order, *Pileggi v. Aichele*, No. 2:12-cv-588 (E.D. Pa. Feb. 8, 2012), D.E. 25 [hereinafter Feb. 8, 2012, Order], 2012 WL 401122.

13. *Pileggi*, 843 F. Supp. 2d at 592-97.

14. *Id.* at 597-98; Feb. 8, 2012, Order, *supra* note 12.

15. *Garcia v. 2011 Legislative Reapportionment Comm'n*, 938 F. Supp. 2d 542, 551 (E.D. Pa. 2013).

16. *Garcia v. 2011 Legislative Reapportionment Comm'n*, 559 F. App'x 128 (3d Cir. 2014).

17. *Id.* at 132.

18. *Holt v. 2011 Legislative Reapportionment Comm'n*, 67 A.3d 1211 (Pa. 2013).

19. Order, *Pileggi v. Aichele*, No. 2:12-cv-588 (E.D. Pa. Mar. 30, 2012), D.E. 28.

20. Order, *Smith v. Aichele*, No. 2:12-cv-488 (E.D. Pa. May 31, 2012), D.E. 22.