

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.)

From January 30 through February 3, 2012, three federal complaints sought to block April 24 primary legislative elections because the district lines were based on the 2000 census. On February 8, the judge denied all requests to delay the primaries. On March 17, 2014, the court of appeals affirmed a judgment against voters because the voters did not reside in districts with legislative seats up for election in 2012.

Subject: District lines. *Topics:* Malapportionment; enjoining elections.

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 after litigation successfully blocked a districting plan based on the 2010 census.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order, a preliminary injunction, a permanent injunction, and a three-judge district court to hear their apportionment challenge.²

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.³ On the day of the hearing, Democratic leaders moved to intervene in opposition to the plaintiffs.⁴ Without ruling on the intervention motion, Judge Surrick permitted the Democratic leaders to participate in the Monday hearing, over the plaintiffs’ objection.⁵

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 3.⁶ 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.⁷ On February 2, the speaker

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 [hereinafter *Garcia* Transcript].

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.

filed a motion to convene a three-judge district court.⁸ Three voters filed a federal complaint against the secretary and the 2011 Legislative Reapportionment Commission to block use of 2000-census lines.⁹ On February 6, the voters moved for a temporary restraining order and a three-judge panel.¹⁰ Judge Surrick heard from all parties in all three actions at the February 6 hearing.¹¹

On February 8, Judge Surrick denied all requests to delay the primary elections.¹² 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.¹³ Because the relief requested was unreasonable, the plaintiffs were not entitled to a three-judge court.¹⁴

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."¹⁵ The court of appeals affirmed Judge Surrick's decision on March 17, 2014.¹⁶ 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."¹⁷

On May 8, 2013, Pennsylvania's supreme court approved a plan filed on April 12, 2012.¹⁸

The other actions were voluntarily dismissed in March¹⁹ and May²⁰ of 2012.

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.

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. *Garcia* 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, *Garcia* Order], 2012 WL 401122.

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

14. *Id.* at 597–98; Feb. 8, 2012, *Garcia* 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.