

**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION – LAW**

IN RE: :
PETITION TO REALIGN : **No.: MD 1894-2012**
ELECTION DISTRICTS IN :
PENNSBURY SCHOOL DISTRICT :

IN RE: :
ESTABLISHMENT OF A NEW :
REPRESENTATION PLAN FOR THE : **No.: MD 1959-2012**
PENNSBURY SCHOOL BOARD :

OPINION

Pennsbury School Board (“Board”) and the “Concerned Residents of Pennsbury” (“CROP”) have submitted competing plans for the realignment of the election districts of Pennsbury School District (“District”). For the reasons discussed herein, we approve the plan of the Board.

I. FACTS

The facts in this case are not in dispute. The District is currently divided into three regions: a northern region (“Region 1”), a middle region (“Region 3”), and a southern region (“Region 2”).¹ Each region elects three members to the nine-member Board. According to the 2010 United States census, the population of the school district is 71,165. The population of Region 1 is 29,035 (40.8 percent of the District’s total population), the population of Region 3 is 22,732 (31.9 percent of total population), and the population of Region 2 is 19,398 (27.3 percent). The parties agree that realignment

¹ A three region plan has been in place since the 1960s, and the current configuration of the District was completed in 1991.

is necessary because the population of the District's three regions has become unbalanced, and each filed a petition for realignment with this Court. (N.T., 8/17/12 p.29).

The District, pursuant to authorization from a June 14, 2012 Board meeting, filed its plan with this Court on June 22, 2012. The District's plan ("Administration 2") maintains the three-region model for the District with a north region ("Region 1"), a middle region ("Region 3"), and a south region ("Region 2"). (Ex. S.B.#1, tab 2). The ideal population of each region in a three-region plan is 23,722.² Administration 2 accomplishes realignment by moving three of the District's thirty-five election precincts from their current regions,³ which achieves the following population distribution:

<u>Region</u>	<u>Population</u>	<u>Deviation from Ideal</u>
1	23,928	+ 206 (+ 0.87%)
3	23,273	- 499 (- 1.89%)
2	23,964	+ 242 (+ 1.02%)

(N.T., 8/17/12 p.77). The maximum deviation of Administration 2 is 2.91%, which is the difference in population between the largest and smallest region (691) divided by the ideal region size (23,722).

John McDonnell, who worked for over 30 years in the District's music department, proposed an alternative plan ("Citizen 1") on behalf of CROP that was signed by 3,852 resident electors of Pennsbury School District. (N.T., 8/17/12 p.146). Citizen 1 advocates dividing the District into nine regions. (Ex. C.R.#9). In a nine-

² Total population (71,165) divided by three.

³ The plan moves two precincts from Region 1 into Region 3 and one from Region 3 into Region 2.

region plan, the ideal population of one region is 7,907.⁴ Citizen 1 apportions the population as follows:

<u>Region</u>	<u>Population</u>	<u>Deviation from Ideal</u>
1	7,941	+ 34 (+ 0.43%)
2	7,982	+ 75 (+ 0.95%)
3	8,127	+ 220 (+ 2.78%)
4	8,032	+ 125 (+ 1.58%)
5	7,876	- 31 (- 0.39%)
6	7,920	+ 13 (+ 0.16%)
7	7,740	- 167 (- 2.11%)
8	8,008	+ 101 (+ 1.28%)
9	7,539	- 368 (- 4.65%)

(Ex. C.R.#9). The maximum deviation of Citizen 1 is 7.44%, which is the population difference between the largest and smallest regions (588) divided by the ideal region size (7,907).

The Petitions were consolidated and we held a hearing on August 17, 2012. After the hearing, we took the case under advisement and counsel submitted legal memoranda.

II. DISCUSSION

We approve the Administration 2 plan to maintain the division of the District in three regions. Our analysis begins with determining whether Administration 2 and Citizen 1 meet the federal constitutional standard of "one person, one vote." If they do,

⁴ Total population (71,165) divided by nine.

our inquiry turns to whether they satisfy the Pennsylvania statutory criteria contained in the School Code and the Election Code. If so, we must consider which plan is most appropriate for the District.

A. “One Person, One Vote”

The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution requires election districts to be “of nearly equal population, so that each person’s vote may be given equal weight in the election of representatives.” *Voinovich v. Quilter*, 507 U.S. 146, 160-61 (1993). This is known as the “one person, one vote” principle. *Gray v. Sanders*, 372 U.S. 368, 379-81 (1963). The “one person, one vote” principle was later extended to school board elections in *Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 50, 53-54 (1970). As such, the regions of a school district must “be apportioned in a manner that does not deprive any voter of his right to have his own vote given as much weight, as far as is practicable, as that of any other voter in the . . . district. *Hadley*, 397 U.S. at 52; *see also Hoots v. Com. of Pa.*, 672 F.2d 1124, 1130 (3d Cir. 1982) (applying “one person, one vote” principle to election of school board); *Cnty. Coll. of Beaver County v. Sch. Dist. of Borough of Aliquippa*, 287 A.2d 844, 846 (Pa. Commw. Ct. 1972).

In *Brown v. Thomson*, 462 U.S. 835 (1983), the Supreme Court provided mathematical guidance to the “one person, one vote” principle. The Court stated that “an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations” from mathematical equality among election districts, and is insufficient to make out a prima facie case of discrimination. *Brown*, 462 U.S. at 842.

Conversely, a plan with a maximum deviation greater than 10% creates a prima facie case of discrimination and must be justified by the state. *Id.* at 842-43. To refute the prima facie case, the state must show the plan reasonably advances a rational state policy. *Id.*

In this case, both plans satisfy the “one person, one vote” requirement. Each of the three regions in the Administration 2 plan deviates from the size of an ideal region by less than two percent. Additionally, the plan has a maximum population deviation of less than 3 percent. The Citizen 1 plan has nine regions that individually deviate from the size of an ideal region by less than 5 percent and has a maximum population deviation of less than 8 percent. Therefore, both plans fall within the “category of minor deviations” and cannot make out a prima facie case of discrimination under *Brown v. Thomson*. We next examine whether the plans fulfill Pennsylvania statutory standards.

B. *Pennsylvania Statutory Requirements*

The Pennsylvania School Code provides that a plan for realignment of a school district may be submitted by a school board or by “[e]lectors equal to at least twenty-five (25) per centum of the highest vote cast for any school director in the last municipal election.” 24 P.S. § 3-303(b)(2). All realignment plans must be submitted to the court of common pleas for approval. *Id.* § 3-303(b)(3). Section 303 of the School Code imposes two criteria on realignment plans: (1) “[t]he boundaries of the regions shall be fixed and established in such manner that the population of each region shall be as nearly equal as possible,” and (2) the boundaries of the regions “shall be compatible with the boundaries of election districts.” *Id.*; see also *In re Spring-Ford Area Sch. Dist.*,

234 A.2d 184, 187 (Pa. Super. Ct. 1967); *In re Bd. of Dirs. of Hazleton Area Sch. Dist.*, 524 A.2d 1083, 1084 (Pa. Commw. Ct. 1987). A third requirement appears in Section 502 of the Election Code: “[w]hen a school district crosses county lines, the regions of the school district shall be composed of contiguous election districts.” 25 P.S. § 2702; *see also Hazleton*, 234 A.2d at 1084.

Initially, both Administration 2 and Citizen 1 are properly before this Court for approval. The Board contended Citizen 1 had not met the requirement of obtaining the signatures of resident electors equal to at least twenty-five percent of the highest vote cast for any school director in the last election. We find this argument without merit. In the last election, the highest vote cast was 3,760. Twenty-five percent of 3,760 is 940. Thus, the CROP petition must be signed by 940 resident electors. Mr. McDonnell testified that he cross-referenced the signatures with a list of the registered voters in Bucks County and 2,772 names checked out. (N.T., 8/17/12 pp.150-54). This figure is nearly three times the required 940 signatures. The Board did not submit evidence that any of the signatures were invalid.⁵ This Court offered to continue the hearing so the Board could investigate whether the petition contained at least 940 valid signatures, but the Board declined to pursue the issue. (N.T., 8/17/12 pp.17-18). Therefore, we find Citizen 1 was properly before this Court for approval.

Turning now to the three criteria of the School Code and Election Code, counsel for both parties stipulated that both plans are compatible with the boundaries of the District’s election districts. (N.T., 8/17/12 p.25). Additionally, there is no question that the entirety of Pennsbury School District is contained in Bucks County, so the

⁵ Apparently, two of the signatures were from electors who were deceased at the time of the hearing. The Board did not offer evidence of whether the two were dead when they allegedly signed the petition.

contiguous election district criterion is not applicable.⁶ See *Hazleton*, 234 A.2d at 1084. Thus, the only remaining issue is whether both plans fix the regions in such a manner that the population of each region is “as nearly equal as possible.” 24 P.S. § 3-303(b)(3). As discussed below, we find that both plans satisfy the “as nearly equal as possible” test.

The Superior Court has reasoned Section 303 of the School Code provides that “the integrity of the election districts must take priority over the population factor. However, the inequality of population, which necessarily results, must be free from any taint of arbitrariness or discrimination.” *In re Chichester Sch. Dist.*, 234 A.2d 187, 190 (Pa. Super. Ct. 1967). In determining whether a regional plan meets the “as nearly equal as possible” requirement, we “must ascertain whether the plan in question creates the most equal regions possible under the circumstances.” *In re Petition to Reapportion the Sch. Dir. Regions of the Chichester Sch. Dist.*, 688 A.2d 1275, 1279 (Pa. Commw. Ct. 1997). There is no specific ratio that satisfies this criterion; instead, “such a determination must turn on the particular facts of each situation, rather than on strict mathematical formulae. . . . [R]atios and percentages of other reapportionment plans are not dispositive here.” *Id.* at 1278. The Commonwealth Court has characterized the election district boundary integrity as a mandatory criterion, but noted that the population requirement is couched in the “malleable language, ‘as nearly as equal as possible.’” *Hazleton*, 524 A.2d at 1086.

We conclude that the division of the regions in the Administration 2 plan is as nearly equal as possible under the circumstances. Administration 2 maintains the

⁶ The Board’s insistence that Region 7 of the CROP plan is not contiguous is misplaced because the Pennsbury School District does not cross county lines.

integrity of the election boundaries of the District as well as the District's traditional three region alignment. The population of the three regions deviates from the ideal size by less than 2% each. The maximum deviation of the plan is under 3%. This slight inequality of population that results because the Board sought to maintain the traditional alignment of the regions is free from any taint of arbitrariness or discrimination.

McDonnell did not present evidence that Administration 2 was arbitrary or discriminatory. The only evidence to suggest that Administration 2 is not as nearly equal as possible under the circumstances was a three region plan, labeled "Citizen 2," presented during McDonnell's testimony. This plan was not properly before the Court because it was not submitted by at least 940 electors. Even McDonnell admitted that CROP was not asking the Court to consider Citizen 2. (N.T., 8/17/12). Instead, Citizen 2 is a theoretical alignment that McDonnell devised. It connected the regions presently known as Region 1 and Region 2, which are the northern and southern regions, by one western precinct. Each region allegedly had a deviation from the ideal region size of under one-half of a percent, and the maximum deviation was also under one-half of a percent, but the difference in the population of the regions in Citizen 2 and Administration 2 is *de minimus*. Therefore, we hold that the regions in Administration 2 are as nearly equal as possible under the circumstances.

We also conclude that the division of the regions in the Citizen 1 plan is as nearly equal as possible under the circumstances. The Board's only argument to the contrary is that the percentages by which Citizen 1 varies from the ideal region size are larger than the percentages in Administration 2 or Citizen 2. This argument is not persuasive because the regions of a nine-region plan are smaller and slight variations in their

population will shift the percentages more than that same variation would shift the percentages in a three region plan. For instance, Region 3 of the Citizen 1 nine-region plan has 220 more residents than an ideal region, which makes its variance from the ideal region size 2.78%; however, Region 2 of the Administration 2 three-region plan has 242 more residents than an ideal region, and its variance from the ideal region size is only 1.02%. We are not persuaded by this comparison, and the Board has not presented any evidence that Citizen 1 is arbitrary or discriminatory. Therefore, we hold that the regions in Citizen 1 are as nearly equal as possible.

Because we have determined that both plans meet the criteria for realignment contained in the School Code and the Election Code, our analysis now proceeds to deciding which of the two plans would best serve the needs of the school district. *In re Petition to Reapportion*, 688 A.2d 1275, 1280 (Pa. Commw. Ct. 1997). In doing so, we may “properly examine other considerations in choosing between two proposals.” *In re Petition to Change Representation Plan of Octorara Area Sch. Dist.*, 722 A.2d 767, 771 (Pa. Commw. Ct. 1999). Among the other factors that trial courts have considered in selecting between two competing plans are “the effects that a given scheme may have on the rights of lesser represented groups and the degree of disruption caused to the community and current Board members by the implementation of a specific plan.” *Resident Electors of Abington Heights Sch. Dist. v. Abington Heights Sch. Bd. of the Abington Heights Sch. Dist.*, No. 99-5343, 2003 WL 25300070, at *16 (C.P. Lackawanna Jan. 31, 2003) (citing *Chichester*, 688 A.2d at 1280-81).

In this case, we have concluded that the Administration 2 three-region plan is better suited for Pennsbury than the Citizen 1 nine-region plan. First, Pennsbury has

traditionally been a three-region district, and Administration 2 maintains that three-region configuration. The superintendent of Pennsbury testified that the administration attempted to devise a nine-region plan, but they were never satisfied with how the precincts had to be arranged to reach acceptable population levels for each region. (N.T., 8/17/12 p.40). This concern is validated by Citizen 1, which is composed of nine irregular and contrived regions that are not natural combinations of precincts. McDonnell testified that his goal in crafting Citizen 1 was to remove the north-south divide of the District. (N.T., 8/17/12 p.172). This is a disadvantage of Citizen 1. We find that Administration 2 is preferable because it maintains the traditional configuration of the District.

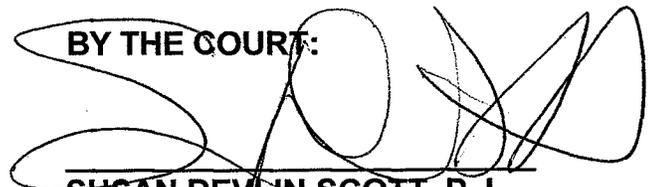
Additionally, Administration 2 is less disruptive to the overall representational scheme because it moves just three precincts—out of the 35 precincts in the District—to new regions. Under Citizen 1, McDonnell admitted that at least three of the nine current Board members would be unseated. (N.T., 8/17/12 p.227). CROP contends that the nine region plan would better achieve “representative democracy” because Board members would be able to be drawn more evenly from the District. (N.T., 8/17/12, p.200). However, McDonnell admitted that under Citizen 1, six members of the Board could come from Falls Township,⁷ which is not an improvement over the Administration 2 three-region plan. (N.T., 8/17/12 p.201-02). Therefore, we conclude that the disruption to the District that would result from implementing Citizen 1 is not outweighed by the unquantifiable, modest potential gain in “representative democracy.”

⁷ Falls Township is one of two large townships that comprise the District. Lower Makefield is the other. The District also includes Yardley and Tulleytown.

Finally, moving forward, the three regions of Administration 2 are better equipped to handle fluctuations in population without becoming unconstitutionally imbalanced and requiring additional realignments.⁸ As demonstrated above, a small fluctuation in population could have a large impact on the weight of several regions' votes. A three-region plan is better equipped to absorb shifts in population, which ensures stability in the future. Therefore, we find that Administration 2 serves the needs of the District both in the present and the foreseeable future.

For the foregoing reasons, we approve the Administration 2 plan for the realignment of Pennsbury School District. Administration 2 adheres to the "one person, one vote" principle, the population of its regions is "as nearly equal as possible" under the circumstances, its boundaries are compatible with the precinct boundaries, and it best meets the needs of the District.

Date: 11/21/12

BY THE COURT:

SUSAN DEVLIN SCOTT, P.J.

⁸ CROP has repeatedly argued that we should not consider future population shifts. We agree with CROP that potential population changes should not be considered in determining whether a plan meets the requirements of Section 303 of the School Code. See *Spring-Ford*, 234 A.2d at 187. However, we find it can be a factor when deciding between the desirability of two plans after determining each satisfies the School Code.

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION – LAW

IN RE:
PETITION TO REALIGN
ELECTION DISTRICTS IN
PENNSBURY SCHOOL DISTRICT

No.: MD 1894-2012

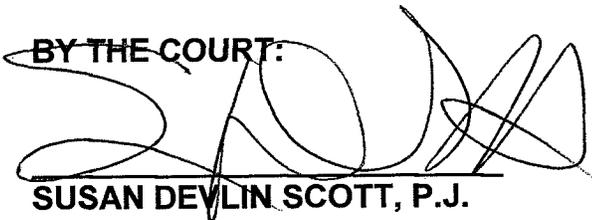
IN RE:
ESTABLISHMENT OF A NEW
REPRESENTATION PLAN FOR THE
PENNSBURY SCHOOL BOARD

No.: MD 1959-2012

ORDER

AND NOW, this st 21 day of November 2012, upon consideration of the
Petition to Realign Election Districts in Pennsbury School District filed by the Pennsbury
School Board, the Petition for the Establishment of a New Representation Plan for the
Pennsbury School Board filed by the Concerned Residents of Pennsbury, the August
17, 2012 hearing, the memoranda of the parties, and oral argument, it is hereby
ORDERED and **DECREED** that the Petition to Realign Election Districts in Pennsbury
School District for election of Pennsbury school board representatives is **APPROVED**.

BY THE COURT:


SUSAN DEVLIN SCOTT, P.J.

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